122–496

TRANSCRIPT OF RECORD.

Supreme Court of the United States,

TO THE OCTOBER TERM, A. D. 1883.

No. ~~760~~ ~~822~~ 501

HENRY F. BEAN AND JOHN W. ALSOP, APPELLANTS.

AGAINST

WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SAEGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL, ED. E. POWELL AND NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.

H. N. FAREY & CO. PRINTERS, JOURNAL BUILDING, KANSAS CITY.

Filed ~~October A. D. 188~~3.

Feby. 23d 1884

Belmont Bank vs. Hoge, 35 New York 69.

Union National Bank of Pittsburg vs. Wheeler, 60 New York 612.

Stewart vs. Broumhall, 74 New York 85.

Payne vs. Frurer, 91 New York 46.

Upon the whole case it seems very apparent that it was well ruled in the Court below.

JOHN DALZELL.

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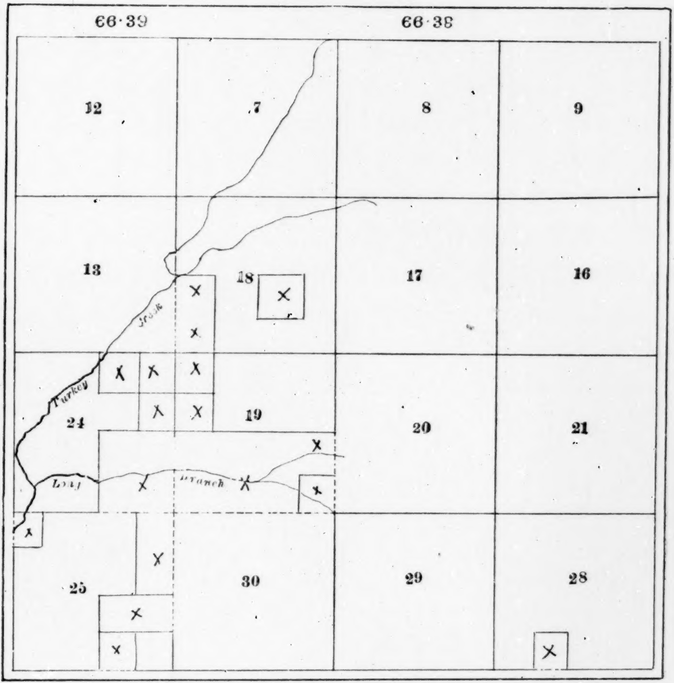
PLAT OF THE WOOD AND MILLER FARM.

(THE LAND IN CONTROVERSY.)



UNITED STATES OF AMERICA, SCT.

H. F. BEAN, *et al.*, *Appellants*,
AGAINST
W. L. PATTERSON, *et al.*, *Respondents*.

Pleas and proceedings had before the Circuit Court of the United States, for the western division of the Western District of Missouri, in the cause of Henry F. Bean and John W. Alsop (under the firm name of Bean & Alsop), complainants, against William L. Patterson, Mary Miller, William Miller, Eli J. Seager, Melchoir H. Horn, Valentine W. Weaver, William B. Powell and Ed. T. Powell (under the name of William B. Powell & Son), and the National Bank of Catasauqua, Pennsylvania, defendants.

Be it remembered that heretofore, to-wit: At a regular term of the circuit court of the United States aforesaid, begun and held at Kansas City, in said western division of the western district of Missouri, on Monday, the 18th day of October, A. D. 1880, and on said named day, the following entry was made upon the order-book of said court, to-wit:

H. F. BEAN, *et. al.*,
against
W. L. PATTERSON, *et. al.*

This day there is received, filed and docketed a transcript of record in the above cause; and said transcript of record is in words and figures following, to-wit:

STATE OF MISSOURI, }
COUNTY OF ATCHISON, } ss.

Be it remembered that on the 23d day of October, 1874, H. F. Bean and John W. Alsop filed in the office of the clerk of said circuit court, in vacation, the following petition, to-wit:

ATCHISON COUNTY,
ATCHISON COUNTY CIRCUIT COURT,
January Term, 1875.

H. F. BEAN and JOHN W. ALSOP, under the firm name of Bean & Alsop, *Plaintiffs*,
against
WILLIAM L. PATTERSON, MARY MILLER and WILLIAM MILLER, *Defendants*.

The plaintiffs complain of the defendants, and show to the court that heretofore, to-wit: On the 21st day of October, A. D. 1874, the plaintiffs instituted a suit by attachment in the circuit court of Atchison county, Missouri, against said defendant William Miller, wherein the amount sought to be recovered is sixteen thousand one hundred dollars; that upon the same day a writ of attachment was issued out of the office of the clerk of said circuit court, directed to the sheriff of said county, which was by said sheriff immediately thereafter, on the same day, levied upon the following described real estate as the property of said William Miller, to-wit: Upon the northwest fourth of the southeast quarter and the west half of the southwest quarter of section No. eighteen (18), the south half and the west half of the northwest quarter of section No. nineteen (19), and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38); the east half and the northwest fourth of the northeast quarter, and the southeast quarter of section No. twenty-four (24), and the east half of the northeast quarter; the northwest fourth of the northwest quarter and the north half and southwest fourth of the southeast quarter, of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39); in all, 1,080 acres, in Atchison county aforesaid.

That on the 20th day of August, A. D. 1873, and for a long time prior thereto, the said William Miller was the owner and was in possession of the above described real estate; that the same was sufficient in value to have paid the whole or greater part of said indebtedness. That afterwards, to-wit: On the 10th day of November, A. D. 1873, while said William Miller was still the owner of said real estate, he and his wife, the said Mary Miller, executed and, on the 7th day of February, A. D. 1874, delivered to said defendant William L. Patterson, a certain deed of trust, a copy of which is herewith filed, purporting to convey to said William L. Patterson the aforesaid lands, described as follows to-wit: The northwest quarter of the southeast quarter and the west half of the southwest quarter of section eighteen; the west half of the northwest quarter and the south half of section nineteen; and the southeast quarter of the southwest quarter of section twenty-eight, in township sixty-six, of range thirty-eight. Also, the east half of the northeast quarter, the northwest quarter of the northeast quarter of section twenty-four; and the east half of the northeast quarter, the northwest quarter of the northwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section twenty-five, in township sixty-six, of range thirty-nine, all situated in said county and state; to have and to hold the same, in trust, for the ostensible purpose of securing to said Mary Miller, the wife of William Miller aforesaid, the payment of the sum of sixteen thousand dollars, with interest from June 25th, 1871, becoming due June 25th, 1876; which sum of sixteen thousand dollars is therein represented to have been received by said William Miller from the sale of the individual property or said Mary Miller, and by him, the said William Miller, used in payment for the real estate in said trust deed described. That it is further provided, in said deed of trust, that in default of payment of said sixteen thousand dollars and the interest thereon when the same become due, the said William L. Patterson shall sell the lands therein described, at public vendue, for the satisfaction of said supposed indebtedness.

Plaintiffs further state, that at the time of the execution and delivery of said deed of trust, the whole of the indebtedness for which said attachment was levied on said land, had accrued to plaintiffs, and that the same is still due and unpaid. That said deed of trust so made and executed as aforesaid is fraudulent and void as against the creditors of said William Miller, existing prior and subsequent to the execution thereof, and particularly against the plaintiffs. That the same was made with the intent to hinder, delay and defraud the creditors of William Miller of their lawful actions, damages, forfeitures, debts and demands, and was made so to hinder, delay and defraud said plaintiffs in particular. Plaintiffs further state that at the time of executing the trust deed aforesaid the defendant William Miller was not indebted to said Mary Miller in the sum of sixteen thousand dollars, or any other sum for moneys received from the sale of her individual estate and used in the purchase of the lands aforesaid, or for moneys belonging to her received or used by him in any manner whatever. That all money or property, if any, received by said William Miller from the property of said Mary Miller, belonged absolutely to him, the said William Miller, by virtue of his relation to her as her husband. That all the defendants in this suit were cognizant of the fraudulent purposes for which said trust deed was executed at the time of the execution thereof.

Wherefore plaintiffs demand that said deed of trust, so executed to William L. Patterson, for the benefit of said Mary Miller, be adjudged void and that the same be set aside, and that such judgment as may be obtained in the aforesaid attachment suit, against said William Miller, may be satisfied out of the real estate therein described, and for such other proper relief as may to this court seem just and equitable.

LEWIS & ESTEB,
Plaintiffs' Attorneys.

The following trust deed attached to and mentioned in the above petition:

This deed, made and entered into this 10th day of November, A. D. 1873, by and between William Miller and Mary Miller, his wife, of the county of Buchanan and State of Missouri, parties of the first part, William L. Patterson, of Whiteside county, State of Illinois, party of the second part, and Mary Miller, wife of said William Miller, aforesaid, party of the third part.

Witness: That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part the following described real estate, situate, lying and being in the county of Atchison and State of Missouri, to-wit: The northwest quarter of the southeast quarter and the west half of the southwest quarter of section eighteen; the south half of section nineteen, and the west half of the northwest quarter of section nineteen; the southeast quarter of the southwest quarter of section twenty-eight, in township sixty-six, range thirty-eight; also, the east half of the northeast quarter, and the northwest quarter of the northeast quarter of section twenty-four, and the east half of the northeast quarter, the northwest quarter of the northwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section twenty-five, in township sixty-six, range thirty-nine, west; the said tracts containing in all 1,080 acres, more or less.

To have and to hold the same, with the appurtenances, to the party of the second part and to his heirs and assigns forever. *In Trust*, however, for the following purposes: whereas, said William Miller, one of the said parties of the first part, is indebted to the said Mary Miller, party of third part, in the sum of sixteen thousand dollars, together with interest thereon, from the 25th day of June, A. D. 1871, being the sum realized and received by said William Miller from the sale of the individual property of said Mary Miller, and used by him in the payment for the real estate hereinbefore mentioned and described, and to secure the indebtedness of said William Miller on account thereof, which said sum of sixteen thousand dollars, with the interest thereon, is due and payable on the 25th day of June, A. D. 1876.

Now if the said debt or sum of sixteen thousand dollars and the interest thereon shall be well and truly paid, when the same becomes due and payable, this deed shall be void and the property herein before conveyed shall be released at the cost of said William Miller, one of the parties of the first part; but if the said debt or sum and interest shall not be well and truly paid, when the same becomes due and payable, then this deed shall remain in force and the said party of the second part, or his legal representatives; or, in case of his death or absence from the state, the sheriff of the county of Atchison may proceed to sell the property hereinbefore described, or any part thereof, at public vendue to the highest bidder, at the court house door in the town of Rock Port, county of Atchison, for cash; first giving sixty days' public notice of the time, terms and place of said sale and of the property to be sold, by advertisement in some newspaper printed in said county, and, upon such sale, shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which he shall pay, first, the cost and expenses of this trust, and next, the said debt or sum of sixteen thousand dollars and interest thereon; and the remainder, if any, shall be paid to the said William Miller, or his legal representatives, and said party of the second part covenants faithfully to perform and fulfil the trust herein created.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Signed, sealed and delivered in presence of us as to Wm. Miller.

W. M. RHODES.
J. DENNE.

As to signature of Mary Miller,

J. W. ZEHNER.
ELIZA ZEHNER.

THE STATE OF OHIO, }
COUNTY OF CHAMPAIGN. } ss.

Be it remembered, that on this 10th day of November, A. D. 1873, before the undersigned, a Notary Public in and for the county of Champaign, and State of Ohio, personally came William Miller, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged that he executed the same for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office, in said county, the day and year last above written.

[SEAL.] N. RHODES,
Notary Public for Champaign County, Ohio.

THE STATE OF OHIO, }
COUNTY OF LOGAN. } SS.

Be it remembered, that on this 10th day of December, A. D. 1873, before the undersigned, a Notary Public in and for said county, personally came Mary Miller, wife of the above named William Miller, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, for the uses and purposes therein mentioned. And the said Mary Miller, being by me first examined separate and apart from her said husband and made fully acquainted with the contents of said instrument, acknowledged that she executed the same and relinquishes her right of dower in the real estate therein mentioned, freely and without fear, compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in said county, the day and year last above mentioned.

[SEAL] JOSEPH H. LAWRENCE,
Notary Public in and for Logan County, Ohio.

STATE OF MISSOURI, }
COUNTY OF ATCHISON, } SS.

I, James M. Tempelton, clerk of the circuit court of Atchison county, Missouri, and ex-officio recorder of said county, do hereby certify that the foregoing is a full and complete transcript of the record of the foregoing deed and certificates of acknowledgements as fully as they appear from the records in my office; that said deed, according to said record, was filed for record on the 7th day of February, A. D., 1874. I further certify that I have this day compared the foregoing transcript with the original deed still on file in my office, and find it a correct copy thereof.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, in Rock Port, Atchison county, Missouri, this 23d day of October, 1874:

JAMES M. TEMPLETON,
Clerk and Recorder,
Per J. W. SMITH, D. C.

STATE OF MISSOURI. }
COUNTY OF ATCHISON. } SS.

Be it remembered, that at a regular term of the Circuit Court, in and for Atchison County Missouri, and of the 29th Judicial

Circuit of the State of Missouri, held at the court house, on the 2nd day of May, 1876, present: Honorable Henry S. Kelly, judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff; John W. Smith, clerk; when the following proceedings were had and done to-wit: And on the second day of said term, to-wit: on the 14th day of May, 1876, the following proceedings were had and done to-wit:

H. F. BEAN and J. W. ALSOP,
Plaintiffs,
against
WILLIAM L. PATTERSON, MARY MILLER and WILLIAM MILLER,
Defendants.
} Civil Action.

Now at this day comes the plaintiffs in the above entitled cause, by their attorney, and it appearing to the satisfaction of the court that the defendants William L. Patterson, Mary Miller and William Miller cannot be summoned in this action, it is ordered by the court that publication be made notifying them that an action has been commenced against them, by petition and affidavit, in the Circuit Court of Atchison County, State of Missouri, the object and general nature of which is to set aside and declaring void a deed of trust executed by William Miller and Mary Miller to William L. Patterson, to secure the payment of the sum of sixteen thousand dollars ($16,000.00), to Mary Miller, wife of William Miller, dated November 10th, 1873, on the following described real estate, to-wit: The northwest fourth of the southeast quarter and the west half of the southwest quarter of section No eighteen (18), and the south half of section No. nineteen (19), and the west half of the northwest quarter of section No. nineteen (19), the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38); also the east half of the northeast quarter and the northwest fourth of the northeast quarter of section No. twenty-four (24), and the east half of the northeast quarter, and the northwest fourth of the northwest quarter, and the north half of the southeast quarter, and the southwest fourth of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39) west 5th P. M., in Atchison County, Missouri; and that unless they be and appear at the next term of said Court, to be begun and held at the court house, in Rock Port, within the County of Atchison, on the 18th day of September, 1876, and on or before the third day thereof (if the term shall so long continue, and if not then before the end of the term), judgment will be rendered against them and their property sold to satisfy the same.

It is further ordered that a copy hereof be published in the Atchison County Journal, a newspaper published in said County of Atchison, four weeks successively, the last insertion to be at least four weeks before the commencement of the next term of said Court.

And again at the regular September term of the Atchison county circuit court, present: Hon. Henry S. Kelly, Judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff; John W. Smith, clerk; begun and held on the 19th day of September, 1876, the following further proceedings were had and done as follows, to-wit:

HENRY F. BEAN and JOHN W. ALSOP,
Plaintiffs,
against
WILLIAM L. PATTERSON, MARY MILLER
and WILLIAM MILLER,
Defendants.

And now comes the said plaintiffs, by their attorney, and file the affidavit of A. B. McCreary, one of the publishers of the Atchison County Journal, a newspaper published in Atchison County, together with a copy of the notice of publication heretofore ordered by this Court, in this cause, whereby it appears to the satisfaction of the Court, that the said defendants, William L. Patterson and Mary Miller, have been duly notified of the pendency of this suit by publication in said newspaper, for four weeks successively, the last insertion having been made at least four weeks before the commencement of the present term of this Court.

And also, at the same term and on the same day, the following proceedings were had in said cause, and entered of record, viz:

HENRY F. BEAN and JOHN W. ALSOP,
Plaintiffs,
against
WILLIAM L. PATTERSON, MARY MILLER
and WILLIAM MILLER,
Defendants.

Now here at this day comes the said plaintiffs, by their attorney, and file an amended petition herein, and comes the said defendants, by their attorney, and upon their application it is ordered that they have leave to file amended answer within sixty days of the next term of this court, to which time this cause is continued:

The amended petition so filed as aforesaid, is as follows, viz:

In the Atchison County Circuit Court, September Term, A. D. 1876.

HENRY F. BEAN and JOHN W. ALSOP,
Plaintiffs,
against
WM. L. PATTERSON, WILLIAM MILLER,
MARY MILLER and ELI J. SEAGER,
Defendants.

Now comes the plaintiffs, and for amended petition state, that heretofore, to-wit: on the 21st day of October, 1874, the plaintiffs instituted a suit by attachment in said Circuit Court of Atchison County, Missouri, against said defendant William Miller, wherein the amount sought to be recovered was sixteen thousand one hundred dollars; that upon the same day a writ of attachment was issued out of the office of the clerk of said Circuit Court, directed to the sheriff of said county, which writ was by said sheriff, immediately thereafter on the same day, levied upon the following described real estate as the property of the said William Miller, to-wit: upon the northwest fourth of the southeast quarter and the west half of the southwest quarter of section No. eighteen (18), the south half and the west half of the northwest quarter of section No. nineteen (19) and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38); the east half and northwest fourth of northeast quarter and the southeast quarter of section No. twenty-four (24) and the east half of the northeast quarter, the northwest fourth of the northwest quarter, and the north half and the southwest fourth of the southeast quarter of section No. twenty-five (25), township No. sixty-six (66), of range No. thirty-nine (39), in Atchison county aforesaid; also a quantity of land in Nodaway county in said state. That on the 20th day of August, A. D. 1873, and for a long time prior thereto, the said William Miller was the owner and was in possession of the above described real estate; that the same was sufficient in value to have paid the whole or a greater portion of said debt. That afterwards, to-wit: on the 10th day of November, A. D. 1873, while said William Miller was still the owner of said real estate, he and his said wife, Mary Miller, executed, and on the 7th day of February, 1874, filed for record in the office of the recorder of said county, a deed of trust, a copy of which is filed with the original petition in this case, purporting to convey to the defendant Wllliam L. Patterson all of said Atchison county lands above described, except the southeast quarter of section No. twenty-four, of township sixty-six, range thirty-nine, for the ostensible purpose of securing the payment of sixteen thousand dollars to said defendant Mary Miller, with interest from June 25th, 1871, which sum of sixteen thousand dollars is therein represented to have been received by said William Miller from the sale of the individual property of said Mary Miller, and by him, the said William Miller, used in payment for the real estate in said deed of trust described. That said deed of trust provided that in case of default of payment of said sixteen thousand dollars, or any part thereof, when due to said Mary Miller, said William L. Patterson, or in case of his absence, death, or refusal to act, the then acting sheriff of Atchison county, should sell said lands and satisfy said supposed debt. That afterwards, to-wit: on the 3d day of January, 1876, said defendants Mary Miller and Wm. Miller pretended to assign and transfer said debt and trust deed to the defendant Eli J. Seager; and that afterwards, said debt having become due by the terms of said deed, and said defendant Patterson being absent, the sheriff of Atchison county proceeded to sell the lands described in said deed of trust for the ostensible purpose of satisfying said sixteen thousand dollars and interest, and did sell and convey the same to defendant Eli J. Seager. That at the time said trust deed was executed most of the indebtedness described in said attachment suit had already accrued, and the remainder was the first accruing under a pre-existing contract of plaintiffs with said William Miller, and had all accrued before plaintiffs became aware of the existence of said deed of trust. That plaintiffs have since, to-wit: at the May term, 1876, of this court, obtained a judgment against said Willlam Miller upon said attachment suit for the sum of fourteen thousand two hundred and seventy-six and 60-100ths dollars, being interest at six per cent per annum from May 11th, 1876, the whole of which is unpaid. That said deed of trust, so made and executed as aforesaid, is fraudulent and void as against the creditors of said William Miller existing prior and subsequent to the execution thereof, and particularly against the plaintiffs. That the same was made with the intent to hinder, delay and defraud the creditors of said William Miller of their lawful actions, damages, forfeitures, debts and demands, and was made so to hinder, delay and defraud plaintiffs in particular. That the recitals in said deed of trust in regard to the indebtedness of said Miller to said Mary Miller, and in reference to her moneys having been used in the purchase of said lands, are false, and made for the fraudulent purposes aforesaid. That all the money or property, if any, received by the said William from said Mary Miller was received by virtue of his relation to her as her husband, and belonged to him as such. That all of the parties to said deed of trust were cognizant of the fraudulent purposes at the time it was executed and filed for record. That said defendant Eli J. Seager at the time of said assignment to them had notice of said fraudulent motives and had notice of the pendency of this suit, which had been filed prior to their supposed purchase of said deed of trust and indebtedness thereby secured. That said defendant Eli J. Seager, at the time of purchasing under said sale by the sheriff ot Atchison county, had full notice of the fraudulent purposes for which said deed was executed, as well as of the existence of this suit to set the same aside.

Wherefore plaintiffs demand that said deed of trust, so executed to the defendant William L. Patterson for the benefit of Mary Miller, as also the assignment thereof to defendant Eli J. Seager, and the subsequent sale thereunder to the defendant Eli J. Seager, be adjudged void and that the same be set aside, and and that said judgment or such other jndgment as may hereafter be obtained under said attachment suit, may be satisfied out of the real estate therein described; and for such other proper relief as may seem to the court just and equitable.

JOHN P. LEWIS,
Att'y for Plaintiffs.

And afterwards, on the 11th day of December, 1876, defendants William Miller and Mary Miller filed in said cause their separate answer, as follows, viz:

In the Atchison Circuit Court.

HENRY F. BEAN and JOHN W. ALSOP, *Plaintiffs*,
against
WILLIAM L. PATTERSON, WILLIAM MILLER, MARY MILLER and ELI J. SEAGER, *Defendants*.

The answer of William L. Patterson, William Miller and Mary Miller to the plaintiffs' amended petition:

These defendants admit the said named ——— with writ of attachment and levy of the same upon the lands named, but they deny that said William Miller, on the 20th day of August, 1873, was, or for a long time prior thereto had been, the owner of said lands. They admit that on the 10th day of November, 1873, said Miller and wife made their deed of trust to said defendant Patterson, conveying said lands to said Patterson, for the purpose of securing the payment of sixteen thousand dollars to defendant Mary Miller, and charge that said consideration was properly recited to have been received to said William Miller from the sale of the individual property of said Mary Miller, and by him, the said William, used in payment for the real estate in said deed of trust described.

Defendants further charge that in good faith said William and Mary Miller, on the 3d day of January, 1876, for a valuable consideration of sixteen thousand dollars, assigned and transferred said debt and trust deed to defendant Eli J. Seager, and that said Seager, in good faith, afterwards had said land sold or charged for the real purpose of satisfying said sixteen thousand dollars, and charge that defendant Seager did purchase and receive a deed of conveyance of said lands in accordance with the terms and conditions of said trust deed. But these defendants deny that at the time said trust deed was executed, the most, or any part, of the indebtedness described in said attachment suit had accrued, or that the remainder was fast accruing under any pre-existing contract with said William Miller, or had all accrued before plaintiffs became aware of the existence of said deed of trust.

Defendants further deny that any indebtedness of said William Miller ever at any time accrued to plaintiffs under any contract, pre-existing or otherwise. Defendants admit the judgment obtained by plaintiffs as charged, but they aver that an appeal from said judgment and decision was immediately tekken, by said William Miller, to the supreme court of the State of Missouri, and charge that said appeal is still pending and undetermined in said court.

But defendants charge that said deed of trust is neither fraudulent nor void as against the creditors of said William Miller existing prior or subsequent to the execution thereof, as against plaintiffs or anyone else. Deny that said deed of trust was made with any intent to hinder, delay or defraud the creditors of the said William Miller of their lawful actions, damages, forfeitures, debts and demands, or was made so to hinder, delay and defraud plaintiffs in particular, or anyone else.

Defendants charge that the recitals in said deed of trust in regard to the indebtedness of said William Miller to said Mary Miller, and in reference to her moneys having been used in the purchase of said lands; are and were true, and were not made for fraudulent purposes. Deny that any money or property received by William Miller from said Mary Miller was received by virtue of his relation to her as her husband and now belonged to him as such. These defendants deny that any of the parties to said deed of trust was cognizant of its fraudulent purposes, either at the time it was executed or filed for record, or at any other time, and deny especially that defendant Seager, at the time of said assignment to him or at any other time, had notice of any fraudulent motives or purposes in connection with said deed of trust, or any notice of the pendency of this suit. Deny that defendant Seager, at the time of foreclosing said deed of trust under sale of said lands by the sheriff of Atchison county, Missouri, had notice of any fraudulent purposes for which said deed of trust had been given, or of the pendency of this suit to set the same aside.

And for further answer these defendants charge that long prior to the existence of any contract between plaintiff and defendant William Miller, in the State of Ohio, the lands named in said deed of trust had been purchased in the said State of Missouri, but had not been paid for; that for the purpose of securing the payment of said purchase money, and to secure parties who had loaned their money to be paid on said lands, said Miller and wife made various mortgages and deeds of trust upon said lands;

that said mortgages and deeds of trust were about being foreclosed; that in order to prevent a sale of said lands, the sole, separate and individual property and moneys of said Mary Miller were used to pay off and remove said mortgages, deeds of trust and encumbrances, with the distinct understanding between said William and Mary Miller that for said moneys and property she was to hold said lands until the moneys were refunded to her; that in order to secure said Mary Miller in the amount of moneys so used, said deed of trust was executed upon said lands, and for no other purpose.

Defendants further charge that afterwards said Mary Miller, in good faith, assigned to her co-defendant Seager said debt and deed of trust, and in consideration thereof he paid to her the amount of said debt in good faith, and with no knowledge of the transaction except that the moneys belonged to said Mary, and not to defraud anyone. Wherefore defendants pray to be dismissed hence.

DURFEE, McKILLOP & VORIES,
Att'ys for Defendants.

And also, on same day, defendant Eli J. Seager filed his separate answer in said cause, viz:

In the Atchison Circuit Court.

HENRY J. BEAN and others,
Plaintiffs,
against
WILLIAM L. PATTERSON and others,
Defendants.

Defendant Eli J. Seager, for separate answer to plaintiffs' amended petition, denies each and every allegation therein, except the making of said deed of trust and the allegation of his purchase of said land.

And for a further answer defendant says that long prior to the time of any alleged contract between plaintiffs and defendant William Miller, in the State of Ohio, the lands named in said deed of trust had been purchased in the State of Missouri, but had not been paid for. That for the purpose of securing the payment of said purchase money, and to secure parties who had loaned their money to be paid on said lands, said Miller and wife made various mortgages and deeds of trust upon said lands; that said mortgages and deeds of trust were about being foreclosed; that in order to prevent a sale of said lands, the sole, separate and individual property and money of said Mary Miller was used to pay off and remove said mortgages, deeds of trust and incumbrances, with the distinct understanding between said William and Mary Miller that for said money and property she was to hold said lands until her moneys were refunded to her, and that in order to secure the said Mary Miller in the amount of moneys so used, said deed of trust was executed upon said lands, and for no other purpose.

This defendant further charges that afterwards said Mary Miller, in good faith, assigned to this defendant said debt and deed of trust, and in consideration thereof this defendant paid to her the amount of said debt, in good faith, and without any knowledge of any indebtedness of William Miller, or of any suit, or of any purpose of said Miller to defraud anybody, and before said debt become due, and well knowing that the sole and separate money and property of said Mary Miller had been used as aforesaid. Wherefore defendant prays to be dismissed hence with his costs.

VORIES and others,
Att'ys for Defendant.

And again, at the regular January term of the Atchison county circuit court, on the 28th day of January, 1880, it being the third day of said term, the further following proceedings were had and done in said cause, and entered of record, viz:

H. F. BEAN and JOHN W. ALSOP,
Plaintiffs,
against
WILLIAM L. PATTERSON, MARY MILLER and WILLIAM MILLER,
Defendants.

Now comes the plaintiffs, by their attorney, and files their amended petition, making Eli J. Seager. Melchor H. Horn, Valentine W. Weaver, The National Bank of Catasauqua, Pennsylvania, William B. Powell and E. F. Powell new party defendants. On application of plaintiffs it is ordered by the court that summons issue for E. F. Powell, directed to the sheriff of Atchison county, Missouri, and made returnable to the next term of this court.

It is further ordered by the court that publication be made as to the balance of newly-made defendants, notifying them of the pendency of this action.

ORDER OF PUBLICATION.

In the Circuit Court of Atchison County, Missouri.

HENRY F. BEAN and JOHN W. ALSOP, under the name of Bean & Alsop, *Plaintiffs,*
against
WILLIAM L. PATTERSON, WILLIAM MILLER, MARY MILLER, ELI J. SEAGER, MELCHOR H. HORN, VALENTINE W. WEAVER, the NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, WILLIAM B. POWELL and E. F. POWELL, under the name of W. B. Powell & Son, *Defendants.*

Now at this day comes the plaintiffs, by their attorneys, and it appearing to the satisfaction of the Court that the defendants, Melchor H. Horn, Valentine W. Weaver, The National Bank of Catasauqua, Pennsylvania, and William B. Powell, cannot be summoned in the action, it is ordered by the court that publication be made, notifying them that an action has been commenced against them by petition in the circuit court of Atchison county, in the State of Missouri, the object and general nature of which is to set aside and declaring void a deed of trust executed by William Miller and Mary Miller to William L. Patterson, to secure the payment of the sum of sixteen thousand dollars ($16,000.00) to Mary Miller, wife of William Miller, dated November 10th, 1873, on the following described real estate, to-wit: The northwest fourth of the southeast quarter, and the west half of the southwest quarter of section No. eighteen (18); the west half of the northwest quarter, and the south half of section No. nineteen (19), and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66) of range No. thirty-eight (38); the east half and northwest fourth of the northeast quarter of section No. twenty-four (24), and the southeast quarter of section No. twenty-four (24), and the east half of the northeast quarter, the northwest fourth of the northwest quarter, the north half and southwest fourth of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), in Atchison county, Missouri, and for an accounting. And that unless they be and appear at the next term of this court, to be holden at the court house in Rockport, in the county of Atchison, on the 24th day of May, 1880, and on or before the third day thereof (if the term shall so long continue, and if not, then before the end of the term), judgment will be rendered against them. It is further ordered that a copy hereof be published in the Atchison County Journal, a newspaper published in the said county of Atchison, for four weeks successively, the last insertion to be at least four weeks before the commencement of the next term of said court.

Amended petition, filed January 28th, 1880, as follows, to-wit:

In the Circuit Court of Atchison County, Missouri.

Henry F. Bean and John W. Alsop, under the name of Bean & Alsop, *Plaintiffs*,
against
William L. Patterson, William Miller, Mary Miller, Eli J. Seager, Melchor H. Horn, Valentine W. Weaver, The National Bank of Catasauqua, Pennsylvania, William B. Powell and E. F. Powell, under the name of W. B. Powell & Son, *Defendants*.

Plaintiffs state that they are partners as to the matters herein described, doing business under the firm name of Bean & Alsop; that heretofore, to-wit: on the 21st day of October, A. D. 1874, they instituted, in the circuit court of Atchison county, Missouri, a suit by attachment against the above named defendant, William Miller, wherein the amount claimed to be due was sixteen thousand one hundred dollars; that upon the same day a writ of attachment issued in said cause out of the office of the clerk of said circuit court, directed to the sheriff of said Atchison county, under and by virtue of which said sheriff did then and there levy upon the following described real estate as the property of said William Miller, to-wit: Upon the northwest fourth of the southeast quarter, and the north half of the southwest quarter of section No. eighteen (18); the west half of the northwest quarter, and the south half of section No. nineteen (19), and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38); the east half and northwest fourth of the northeast quarter of section No. twenty-four (24); the southeast quarter of section No. twenty-four (24), and the east half of the northeast quarter, the northwest fourth of the northwest quarter, the north half and southwest fourth of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), situate in Atchison county aforesaid. That the suit so instituted by attachment was so prosecuted in said court that plaintiffs recovered judgment therein in May term, A. D. 1876, for the sum of fourteen thousand two hundred and seventy-six and 66-100 dollars, besides costs of suit. That said William Miller appealed said cause to the supreme court of the State of Missouri, which, on the 13th of May, 1879, upon a hearing of said cause, in all things affirmed, together with costs of appeal, and mandate from said court duly filed in the circuit court aforesaid. That there has been made on said judgment, by sale of southeast quarter of section twenty-four aforesaid, on the 23d day of September, 1879, the sum of thirty-two hundred and fifty-seven and 20-100 dollars, but that the balance of the judgment so renderd on said attachment suit, with the interest thereon, is still due and unpaid.

Plaintiff further states that said suit was instituted upon a contract between plaintiffs and said William Miller, executed in August, 1873, for the performance of certain labor and work upon a railroad in the State of Ohio, under which large quantities of work had been done in September, October and November, and other months following in 1873 and 1874.

That said defendant William Miller, at the time of executing said contract, and for a considerable time prior and subsequent thereto, was the owner the above described lands, as well as also of the northwest fourth of the northeast quarter of section No. fifteen (15), in township No. sixty-six (66), of range No. thirty-eight (38), in Nodaway county. That said lands were sufficient to have paid the whole or a greater portion of said debt. That after the making of said contract, and after plaintiffs had entered upon and performed the greater portion of the work thereunder, to-wit: on the 10th day of November, 1873, said William and Mary Miller, his wife, executed, and on the 7th day of February, A. D. 1874, filed for record in the office of the recorder of deeds of said Atchison county, a deed of trust, a copy of which is on file in this case, purporting to convey to the defendant William L. Patterson all of said Atchison county lands except said southeast quarter of section No., twenty-four (24), for the ostensible purpose of securing the payment of sixteen thousand dollars to said defendant Mary Miller, with interest from June 25th, 1871, which sum of sixteen thousand dollars is therein represented to have been received by said William Miller from the sale of the individual property of the said Mary Miller, and used by her said husband in payment for the real estate in said deed of trust described. That said deed of trust provides for foreclosure by said trustee Wm. L. Patterson, or in case of his absence, death, or refusal to act, by the then acting sheriff of Atchison county, Missouri.

That said deed of trust was not made in good faith, or for the purposes therein expressed, but was executed with the intent to hinder, delay and defraud the creditors of said William Miller of their lawful actions, damages, forfeitures, debts and demands, and was so made to hinder, delay and defraud plaintiffs in particular, and that all the parties to said deed of trust were cognizant of its fraudulent purposes.

That plaintiffs, at the time of filing said attachment suit, filed in the same court a suit to set aside said deed of trust on account of the aforesaid fraudulent purposes, and that this suit is a continuation of said cause, and is the second amended petition filed therein.

That after the institution of said suit by attachment and to set aside deed of trust, to-wit: on the 3d day of January, 1876, said defendants William and Mary Miller sold said lands, including the entire amount hereinbefore described, to the defendants Eli J. Seager, Melchor H. Horn, Valentine W. Weaver and the National Bank of Catasauqua aforesaid, for the named consideration of thirty-six thousand four hundred dollars, intending to sell them their entire interest in said lands of whatsoever name or nature. But that, instead of making the deed to all said purchasers, they executed to said Melchor H. Horn and Valentine W. Weaver a deed purporting to convey all of the above lands to them, covenanting against all incumbrances except said deed of trust, and at the same time, for the pretended consideration of twelve thousand dollars, conveyed and transferred said fraudulent deed of trust to said defendant Eli J. Seager; that all of said parties purchased with full notice of said attachment suit and the suit to set aside said deed of trust, as well as said fraudulent motives of said Miller and wife, and that the transfer of said deed of trust to said Eli J. Seager was a mere subterfuge to enable defendants the better to avoid said attachment suit; that in fact said twelve thousand dollars, so purported to be paid for said deed of trust, was included in and formed a part of said consideration of thirty-six thousand four hundred dollars. That said consideration was made up of items substantially as follows:

First. Three thousand dollars which Miller is said to have owed said Horn, Seager and Weaver for rent upon what was formerly known as the Ramsey farm in this county.

Second. Six thousand dollars claimed to have been due from said Miller to said National Bank of Catasauqua

Third. Twelve thousand dollars for various debts of said William Miller to said Eli J. Seager, or which had been paid or endorsed by said Seager for said Miller.

Fourth. About four thousand dollars which is claimed was paid by them to one Joseph M. Patterson, for debts coming to him, one of which was a judgment in favor of one Herman Koontz, which had been assigned to said Patterson, and which was about two thousand dollars; and

Fifth. Various other items of indebtedness of said Miller to said purchasers, or assumed to be paid by them, amounting to fifty-two hundred dollars, and amounting in the aggregate to thirty thousand two hundred dollars, and leaving a balance due said William Miller, on the contract price of said lands, of six thousand two hundred dollars, which they reserved on account of said attachment suit, and to meet other defects that might exist in the title to said lands so purchased.

That at the time said attachment suit was instituted, there was against all the lands above described a mortgage in favor of one Herman Koontz, which had, on the 24th of September, 1874, been foreclosed and judgment thereon obtained in said circuit court for $2,071.20, including therein one hundred dollars as attorneys fee, besides costs; that this mortgage and judgment was afterwards paid off and satisfied by said William Miller, but in order to make it appear as still a lien on said lands, he claimed the same to be assigned to one Joseph M. Patterson, without recourse; that it is the same Herman Koontz judgment which was included in said four-thousand-dollar item of consideration; that when said defendants, Horn, Seager, Weaver and others, purchased said lands of said Miller, instead of cancelling said mortgage and judgment, they procured an assignment thereof by said Joseph Patterson to said Eli J. Seager, for the purpose of further covering up and encumbering said lands; that, in fact, they paid nothing for said judgment except what was included in said thirty-six thousand four hundred dollars.

Plaintiffs further state that defendants Seager, Horn, Weaver, and said National Bank of Catasauqua, upon their said purchase, took immediate possession of said premises, and in connection with said William B. Powell and Ed. F. Powell, under name of Wm. B. Powell & Son, who, it is claimed, have since become interested therein, they have continued in possession thereof up to the present time, receiving the rents and profits of said premises.

That after the purchase and taking the possession of said lands, as above mentioned, said defendants procured the lands mentioned in said deed of trust, to be sold under said deed of trust, by the sheriff of Atchison county aforesaid, and to be purchased in by said Eli J. Seager for the benefit of all the defendants interested in said purchase from Wm. Miller and wife, but they caused the deed to be made to said Eli J. Seager alone, as though he was the only purchaser, *who*, in fact, it was made as much for the benefit of said Horn, Weaver and said bank, as for himself.

That said last mentioned sale was made while this suit was pending to set aside said deed of trust, in order to complicate the title to said lands, and to further their continued efforts to deprive plaintiffs of the benefit of their attachment, and that, too, notwithstanding said defendants were in the possession, claiming the lands they themselves caused to be sold under the deed of trust, and notwithstanding the further fact they had reserved said sum of six thousand two hundred dollars to meet said attachment suit and other defects of title.

Plaintiffs further state that the said forty acres of lands in Nodaway county, is not included in either said attachment or deed of trust, and that it is reasonably worth six hundred dollars. That said southeast quarter of section twenty-four (24) was not included in said deed of trust, and that it is reasonably worth fifty-one hundred dollars. That said Herman Koontz mortgage covers all the lands mentioned in this petition, including the said southeast quarter of section twenty-four (24), and the forty acre tract in Nodaway county. That the rents and profits of said southeast quarter of section twenty-four (24), since said 3d of January, 1876, are reasonably worth fifty dollars per month, and that the rents and profits of the land included in said deed of trust, during the same time, are reasonably worth two hundred and fifty dollars per month, and that the whole of said lands are reasonably worth three hundred dollars per month.

Plaintiffs further state that all of said defendants are non-residents of the State, except said E. F. Powell, so that personal process cannot reach them.

Plaintiffs therefore pray that said deed of trust be canceled, set aside and held for naught; that said Herman Koontz judgment be declared to be satisfied, and the lien removed from the lands embraced in said deed of trust, and that the lands in said deed of trust, or so much thereof as may be necessary, be sold to satisfy said judgment of plaintiffs; that in case the court should find any portion of either said deed of trust or Koontz judgment to have been valid liens against said lands, then that the court take an account of the rents and profits received by defendants from said lands, and of said sum of six thousand two hundred dollars so reserved, together with six per cent interest thereon, from January 3d, 1876, and that the court marshall the liens and assets in such a manner as to pay said Herman Koontz judgment first out of said southeast quarter of section twenty-four (24) and said Nodaway county tract, and the rents therefor, and for all other proper relief.

BEAN & ALSOP,
By John P. Lewis, their attorney.

And afterwards, at the May Term, 1880, of said circuit court, and on the 24th day of May, 1880, the following proceedings were had and done in said court, in the matter of said cause, viz.:

Henry F. Bean and John W. Alsop, under
the name of Bean & Alsop, *Plaintiffs*,
against
William L. Patterson, William Miller,
Mary Miller, Eli J. Seager, Melchor
H. Horn, Valentine W. Weaver, The
National Bank of Catasauqua, Pennsylvania, William B. Powell and E. F.
Powell, under the name of W. B. Powell
& Son, *Defendants.*

Now, on this day, comes plaintiffs and file bond for costs, and they also file proof of publication of order made at last term as to Melchor H. Horn, Valentine W. Weaver, National Bank of Catasauqua, Pennsylvania, and W. B. Powell; and also, at the same time, come defendants and file petition and bond for removal of cause to the circuit court of the United States for the western division of the western district of Missouri, which said petition and bond being seen and heard by the court, the court now here approves said bond and orders that said cause be removed to said circuit court of the United States, and that the record of this cause be certified to that court, and that no further proceedings be had herein in this court.

PETITION FOR REMOVAL OF CAUSE.

Said petition is in words and figures as follows, viz:

In the Circuit Court of Atchison County, State of Missouri.

HENRY F. BEAN and JOHN W. ALSOP,
Plaintiffs,
against
WILLIAM L. PATTERSON, WILLIAM MILLER, MARY MILLER, ELI J. SEAGER, MELCHOR H. HORN, VALENTINE W. WEAVER, NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, WILLIAM B. POWELL and E. F. POWELL,
Defendants.

Petition for removal to the circuit court of the United States, western division of western district of Missouri.

To the Honorable the Circuit Court of Atchison County, State of Missouri:

Your petitioners, the above-named defendants, respectfully show to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioners William L. Patterson, William Miller and Mary Miller were at the time of the commencement of this suit, and still are, citizens of the State of Illinois, and the petitioner Eli J. Seager was then, and still is, a citizen of the State of Pennsylvania; and that the petitioners the said Melchor H. Horn, Valentine W. Weaver, The National Bank of Catasauqua, Pennsylvania, and William B. Powell were then, and still are, citizens of the State of Pennsylvania and residents thereof, and that the petitioner the said E. F. Powell was then, and still is, a citizen of the State of Missouri and resident thereof; and that the plaintiffs in said cause, the said Henry F. Bean and John W. Alsop, were at the time of the commencement of this suit, and still are, citizens of the State of Ohio and residents thereof.

And your petitioners offer herewith a bond with good and sufficient surety for his entering in said circuit court of United States, on the first day of the next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And they pray this honorable court to proceed no further herein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the western division of the western district of Missouri, holden at Kansas City; and they will ever pray.

A. B. DURFEE,
McKILLOP,
ALLEN H. VORIES,
VINTON PIKE,
Attorneys for Petitioners.

STATE OF MISSOURI, } ss.
COUNTY OF ATCHISON, }

I, Aaron B. Durfee, being duly sworn, do say that I am one of the attorneys for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

A. B. DURFEE.

Subscribed and sworn to before me this 24th day of May, 1880.

[SEAL.] JOHN W. SMITH,
Clerk Atchison County Circuit Court.

BOND FOR REMOVAL OF CAUSE.

Said bond is in words and figures following, viz.:

Know all men by these presents, that we, Albert Warnchaffe, as principal, and A. B. Durfee, as surety, are held and firmly bound unto Henry F. Bean and John W. Alsop, in the penal sum of five hundred dollars ($500), the payment whereof well and truly to be made unto the said Henry F. Bean and John W. Alsop, their heirs and assigns, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents; yet upon these conditions: William L. Patterson, William Miller, Mary Miller, Eli J. Seager, Melchor H. Horn, Valentine W. Weaver, the National Bank of Catasauqua, William B. Powell and E. F. Powell, having petitioned the circuit court of Atchison county, State of Missouri, for the removal of a certain cause therein pending, wherein Henry F. Bean and John W. Alsop are plaintiffs, and said William L. Patterson, William Miller, Mary Miller, Eli J. Seager, Melchor H. Horn, Valentine W. Weaver, the National Bank of Catasauqua, Pennsylvania, William B. Powell and E. F. Powell, are defendants, to the circuit court of the United States in and for the western division of the western district of Missouri.

Now, if the said above named petitioners shall enter in the said circuit court of the United States, on the first day of the next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 24th day of May, A. D. 1880.

ALFRED A. J. WANNSCHAFF. [SEAL.]
A. B. DURFEE. [SEAL.]

STATE OF MISSOURI. }
COUNTY OF ATCHISON. } ss.

I, John W. Smith, clerk of the circuit court in and for said county of Atchison, do hereby certify that the foregoing is a true and complete copy of the record in the suit therein entitled, as the same appears of record and on file in my office.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court this 14th day of August, A. D. 1880.

JOHN W. SMITH, Clerk.

And afterwards, to-wit: at the regular October term of said court, and on the 29th day of October, A. D. 1880, the following entry appears of record, to-wit:

ORDER FOR COMPLAINANTS TO REPLEAD.

H. F. BEAN }
against }
W. L. PATTERSON *et al.* }

This day come the parties, by their solicitors, and the motion of defendants to require complainants to replead is taken up and sustained; thereupon leave is granted said complainant to replead by December rules; to defendants to answer by February rules, and to complainant to reply by March rules.

And in vacation of said court, on the 2d day of December, A. D. 1880, the following entry appears of record, to-wit;

H. F. BEAN }
against }
W. L. PATTERSON *et al.* }

This day there is received and filed herein an amended bill by way of repleader.

AMENDED BILL OF COMPLAINT BY WAY OF REPLEADER.

Said amended bill by way of repleader is in words and figures as follows, to-wit:

In the circuit court of the United States for the western division of the western district of Missouri, in the eighth circuit.

HENRY F. BEAN and JOHN W. ALSOP, under the firm name of Bean & Alsop, *Complainants,*

vs.

WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SEAGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL and ED. E. POWELL, under name of William B. Powell & Son, and the NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, *Defendants.*

To the judges of the circuit court of the United States for the western division of the western district of Missouri, in the eighth circuit:

Henry F. Bean, a resident and citizen of the State of Michigan, and John W. Alsop, a resident and citizen of the State of Ohio, who, as to the matters hereinafter contained, are co-partners doing business under the style and firm name of Bean & Alsop, by way of repleader in this court, bring this their bill in equity against William L. Patterson, Mary Miller and William Miller, residents and citizens of the State of Illinois; Eli J. Seager, Melchor H. Horn, Valentine W. Weaver, William B. Powell and the National Bank of Catasauqua, Pennsylvania, citizens and residents of the State of Pennsylvania, and Ed. E. Powell, a resident and citizen of the State of Missouri; and thereupon your orators complain and say:

First. That complainants were, at the original institution of this suit, and still are, co-partners as to all matters herein involved, doing business under the firm name of Bean & Alsop.

Second. That heretofore, to-wit: on the 21st day of October, A. D. 1874, they instituted in the circuit court of Atchison county, Missouri, a suit by attachment against the above-named William Miller, wherein the amount claimed to be due was sixteen thousand one hundred dollars, and that upon the same day a writ of attachment was issued out of the office of the clerk of said Atchison county circuit court in said cause, directed to the sheriff of said Atchison county, under and by virtue of which said sheriff did then and there levy upon and attach the following-described real estate as the property of said William Miller, to-wit: The northwest fourth of the southeast quarter and the west half of the southwest quarter of section No. eighteen (18), the west half of the northwest quarter and the south half of section No. nineteen (19), and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38); the east half and northwest fourth of the northeast quarter, and the southeast quarter of section No. twenty-four (24), the east half of the northeast quarter, the northwest fourth of the northwest quarter, the north half of the southeast quarter and the southwest fourth of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), all in Atchison county, Missouri.

Third. That complainants so prosecuted said suit of attachment, that they, in the month of May, A. D. 1876, recovered judgment in said cause, in said Atchison county circuit court, for the sum of fourteen thousand two hundred and seventy-six and 66-100ths dollars for their debt and damages, besides costs of suit, which judgment bears interest at six per cent per annum; that said William Miller appealed said cause from the circuit court aforesaid to the supreme court of the State of Missouri, where the judgment of said circuit court was, on the 12th day of May, A. D. 1879, by said supreme court, in all things approved and affirmed, and that the mandate of said supreme court, affirming said judgment, has since been filed in said Atchison circuit court.

Fourth. That there has, since the decision of said supreme court, to-wit: on the 23d day of September, A. D. 1879, been collected on said judgment, by the sale of said southeast quarter of section No. twenty-four (24), the sum of thirty-two hundred and fifty-seven and 20-100ths dollars, besides costs of suit; but your orators allege that the entire balance of said judgment, and interest thereon, remains due and unpaid, and in full force and effect.

Fifth. That said suit was instituted upon a contract made by and between the complainants herein and said William Miller, in the month of August, A. D. 1873, for the performance of certain work and labor upon a railway in the State of Ohio, under which your orators, the plaintiffs in said attachment suit, had, in the years 1873 and 1874, perfomed large quantities of work, the greater part of which was performed, and for which defendant William Miller owed said plaintiffs at the time of executing the deed of trust hereinafter mentioned.

Sixth. That said William Miller, at the time of executing the contract so sued on, and for a considerable time before and subsequent thereto, was the owner of the above described lands, and also the owner of the northwest fourth of the northeast quarter of section No. fifteen (15), in township No. sixty-six (66), of range No. thirty-eight (38), in Nodaway county, State of Missouri; that said lands were altogether sufficient to have paid the whole or the greater portion of said debt.

Seventh. That after the execution of the contract so sued upon, and the performance of the greater portion of the work done thereunder, and while said work was still in progress, to-wit: on the tenth day of November, A. D. 1873, said William and Mary Miller, his wife, executed, and on the 7th day of February, A. D. 1874, filed for record in the office of the recorder of deeds of said Atchison county, a deed of trust, a copy of which is attached to the original bill in this cause, purporting to convey to the defendant William L. Patterson all the said Atchison county lands except the said southeast quarter of section No. twenty-four (24), for the alleged purpose of securing to said Mary Miller a pretended indebtedness from said William Miller to her of the sum of sixteen thousand dollars, with interest, which sum of sixteen thousand dollars is therein represented to have been received by said Mary Miller from the sale of the individual property of said Mary Miller, and used by her husband in payment for the real estate in said deed of trust described; that said deed of trust provided for foreclosure, in default of payment by said trustee, William L. Patterson, or in case of his absence, death or refusal to act by the then acting sheriff of Atchison county, Missouri. That at said times, William Miller, and before the execution of said deed of trust, was and is insolvent, and has no other property out of which to pay the debt of complainants herein.

Eighth. But your orators allege that said deed of trust was not made in good faith for the purposes therein expressed, to secure any indebtedness to said Mary Miller for moneys derived from her individual estate, and used by said William in payment for said lands, but was executed for the purpose and with the intent to hinder, delay and defraud the creditors of him, the said William Miller, of their lawful actions, damages, forfeitures, debts and demands, and especially so to defraud your orators, and that all the parties to said deed of trust were cognizant of its fraudulent purposes, and your orators further charge that said instrument is fraudulent on its face.

Ninth. Your orators further state that at the time of instituting said attachment suit against said William Miller, they also, under and by virtue of the statute of Missouri, as provided in section No. fifty-one of chapter one hundred and forty-one, of the revised statutes of A. D. 1865, then and still in force, instituted a suit in the nature of an equity proceeding, for the purpose of setting aside said deed of trust, on account of the fraud aforesaid, and that this suit is a continuation of that cause, amended and modified to meet the new facts growing out of said cause, and new parties who have since become interested, the original defendants in this cause being said William and Mary Miller and said William L. Patterson alone.

Tenth. That after the institution of said suits, to-wit: on the 3d day of January, A. D. 1876, said defendants, William and Mary Miller, sold said lands, including the entire amount hereinbefore described, to said Eli J. Seager, Melchor H. Horn, Valentine W. Weaver and The National Bank of Catasauqua, but that, instead of making a deed direct to all the purchasers, said Miller and wife executed a general warranty deed purporting to convey all the lands aforesaid to said Melchor H. Horn and Valentine W. Weaver, for the consideration of thirty-six thousand four hundred dollars, covenanting against all incumbrances except said deed of trust; and at the same time pretended to assign said deed of trust to said Eli J. Seager for the pretended consideration of twelve thousand dollars, whereupon said Seager, Horn, Weaver, and said National Bank, took immediate possession of said premises, and have ever since, by themselves and their agents, and in connection with said William B. Powell & Son, who, as your orators are informed and believe, have since become interested in said lands, been in possession thereof, receiving the rents and profits, and with full notice of said suits, and the fraudulent character of said deed of trust.

Eleventh. Your orators further allege that nothing whatever was paid for the pretended assignment of said deed of trust, and no money paid to said William or Mary Miller, for the conveyance of said lands, but the entire amount of said thirty-six thousand four hundred dollars, except six thousand two hundred dollars, was made up of various pretended items of indebtedness to said Seager, Horn, Weaver, and said bank, and other indebtedness which said purchasers pretend to have assumed and paid for said William Miller, and that the said Seager, Horn, Weaver and National Bank of Catasauqua, reserved said sum of six thousand two hundred dollars on account of said attachment suit, and to apply on any losses they might sustain by reason of such attachment.

Twelfth. That at the time said attachment suit was instituted, there was against all the land hereinbefore described a mortgage from said William Miller and wife to one Herman Koontz, which had, on the 24th day of September, A. D. 1874, been foreclosed and judgment rendered in said Atchison county circuit court, for two thousand and seventy-one and 20-100ths dollars, including one hundred dollars for an attorney's fee, besides costs. That this judgment was paid off and satisfied by said William Miller, but in order to make it appear as still a lien on said lands, he caused the same to be assigned to one Joseph

M. Patterson, and that after the purchase of said lands by said Seager, Horn, Weaver and others, they procured said Koontz judgment to be assigned, as defendants pretend, by said Patterson to said Eli J. Seager; that in fact nothing whatever was paid for said judgment, except what had already been included in said consideration of thirty-six thousand four hundred dollars; that the pretended assignment of both said deed of trust and said Koontz judgment to said Seager were both made for the purpose of the better covering up the title to said lands and avoiding said attachment suit.

Thirteenth. That after the maturity of said deed of trust, and while said purchasers were in possession of said premises, to-wit: on the 20th day of September, A. D. 1876, said defendants caused the lands mentioned in said deed of trust to be sold for the purpose of satisfying the pretended debt therein mentioned, and to be purchased in by said Eli J. Seager for the benefit of all the defendants interested in the purchase from said Miller and wife, but caused the deed from the trustee to be made to said Seager as though he were the only purchaser, when, in fact, it was made as much for the benefit of said other defendants, the purchasers, as for himself; that said sale was made while said attachment suit and said suit to set aside were pending, for the purpose of further complicating the title to said lands, and that, too, notwithstanding they were in possession of said lands, receiving the rents and profits, and notwithstanding they had also retained the six thousand two hundred dollars for the purpose of meeting any damages sustained on account of such attachment.

Fourteenth. Your orators further state that said forty acres in Nodaway county is not included in either said attachment or deed of trust, and that it is reasonably worth seven hundred dollars; that said southeast quarter of section No. twenty-four (24) is not included in said deed of trust, and is reasonably worth fifty-two hundred dollars; that said Herman Koontz mortgage and judgment covers all the lands mentioned in this petition, including the two last mentioned tracts; that the rents and profits of said southeast quarter of section No. twenty-four (24), during the time at it has been occupied by said purchasers, Seager, Horn, Weaver and others, are reasonably worth fifty dollars per month, and the rents and profits of the lands covered by said deed of trust having, during the same time, been reasonably worth the sum of two hundred and fifty dollars per month, making in all three hundred dollars per month for said Atchison county lands.

Fifteenth. That said purchasers have been defending this cause ever since they became interested in said lands, and said Seager, upon plaintiffs attempting to collect said judgment by execution against said Atchison county lands, to-wit: in September, 1879, filed a petition for and secured in said Atchison county circuit court, a temporary injunction, restraining your orators from selling any of said lands, except said southeast quarter of section No. twenty-four (24), until the termination of this cause, or until the further orders of said court, and which injunction suit has also been transferred to and is now pending in this court.

Sixteenth. Your orators further state that all of said defendants have been notified and have appeared in this cause, and that complainants waive their right of requiring an answer under oath from defendants, or from any of them, to the allegations in this bill.

Seventeenth. Your orators therefore pray that this honorable court adjudge and decree that said deed of trust be set aside and held for naught; that said Herman Koontz judgment be declared to be satisfied, and the lien thereof removed from said lands, and that the lands embraced in said deed of trust, or so much thereof as may be necessary, be sold to satisfy said judgment; and that in case the court should find that any portion of said deed of trust, or of said Koontz judgment, be valid and unpaid liens against said lands, as against complainants, then your orators pray that an account of the rents and profits received by said purchasers from said lands be taken, and also of said six thousand two hundred dollars reservation, with six per cent interest from January 3d, A. D. 1876; that the court marshall the liens and assets in such a manner as to pay any liens or equities existing in favor of any of the defendants by virtue of said Koontz judgment and mortgage, first out of said southeast quarter of section No. twenty-four (24) and said Nodaway lands and the rents therefrom, and to apply the full amount of said reservation and interest, and the rents and profits of lands embraced in said deed of trust, first to the satisfaction of said deed of trust, if any portion should be held valid, and afterwards to the satisfaction of said Koontz lien, if any there should remain, and for such other relief, including, if necessary, a sale of all the aforesaid land in both said Atchison and Nodaway counties, as to the court may seem equitable and just.

S. P. TWISS, and
JOHN P. LEWIS,
Solicitors for complainants.

And afterwards, at an adjourned day of the regular October term A. D. 1880, of said court, and on the 7th day of February, A. D. 1881, the following entry appears of record, to-wit:

H. F. Bean
against
W. L. Patterson *et al.*

This day come defendants and file answer.

ANSWER TO AMENDED BILL OF COMPLAINT.

Said answer is in words and figures as follows, to-wit:

In the United District Court, for the Western Division of the Western District of Missouri.

In Equity.

HENRY F. BEAN and JOHN W. ALSOP, under the firm name of Bean & Alsop, *Complainants,*
vs.
WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SEAGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL and ED. E. POWELL, under name of William B. Powell & Son, and the NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, *Defendants.*

The answer of the above named defendants to the bill of complaint of Henry F. Bean and John W. Alsop, complainants, filed in this court, the defendants, now and at all times hereafter saving and reserving to themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in said complainants' bill of complaint contained, for answer thereto, and unto such and such parts thereof as these defendants are advised is or are material or necessary for them, or any of them, to answer unto, they, these defendants, severally answering, say:

They admit that said Henry F. Bean and John W. Alsop are respectively citizens of the respective States, as stated in their said bill, and that these defendants are respectively citizens and residents of the States mentioned and as alleged in said bill.

The defendant William Miller says he is informed and believes that the plaintiffs were, at the original institution of this suit, and still are, partners as to the matters herein involved, under the firm name of Bean & Alsop, and the other defendants say they have not sufficient knowledge or information thereof to form a belief, and never were otherwise informed thereof than by complainants' said bill.

Second. The defendant William Miller admits that about the 21st day of October, A. D. 1874, complainants instituted in the circuit court of Atchison county, in the State of Missouri, a suit by attachment against the said William Miller, wherein the amount claimed to be due was sixteen thousand one hundred dollars, upon which a writ of attachment was issued and levied upon the lands described in complainants' petition. And the other defendants say, in answer to said allegations, that they have not sufficient knowledge or information thereof to form a belief, and never were otherwise specially informed thereof than by complainants' said bill.

Third. The defendant William Miller admits that the complainants so prosecuted said suit of attachment that, in the month of May, A. D. 1876, they recovered a judgment in said circuit court of Atchison county, in the State of Missouri, for the sum of fourteen thousand two hundred and seventy-six and 66-100ths dollars, for their debt and damages, besides costs of suit, and which judgment bears interest at six per cent per annum; and that said judgment was appealed from, by said defendant William Miller, to the supreme court of Missouri, where said judgment was in all things confirmed. And the other defendants, in answer to said allegations in reference to the prosecution of said suit and obtaining judgment thereon against their co-defendant Miller say that they have not sufficient knowledge or information thereof to form a belief, and never were otherwise specially informed thereof than by complainants' bill.

Fourth. These defendants all say that they have no knowledge or information sufficient to form a belief as to whether any part of said alleged judgment has been paid or not, and have never been otherwise informed thereof than by complainants' bill.

Fifth. The defendant William Miller admits that said suit was instituted upon a contract made by and between the complainants and himself, in the month of Aagust, A. D. 1873, for the performance of certain work and labor upon a railway in the State of Ohio, but as to how much work the said plaintiff had performed in the years 1873 and 1874 he has neither information nor knowledge thereof sufficient to form a belief prior to the execution of the deed of trust hereinafter named, or at any other time, prior or subsequent.

And the other defendants, in answer to said allegations, say that they have not sufficient knowledge or information thereof to form a belief, and never were otherwise informed thereof than by complainants' bill.

Sixth. The defendant William Miller denies that at the time of executing the contract sued on, or for any time before or subsequent thereto, he was the equitable owner of the lands set out in said complainants' bill, or that said lands were of no greater value than to have paid said judgment debt. He admits that at said time the legal title to said lands was in him, said Miller. And the other defendants, except Mary Miller, say that they have not sufficient knowledge or information thereof to form a belief, and never were otherwise informed thereof than by complainants' bill; and the said defendant Mary Miller says that the equitable title to said lands, at the time specified, was in her, by reason of loaning the said William Miller, who was her husband, her individual, sole and separate moneys, with which to remove liens and pay off incumbrances upon said land, by which she became and was in equity subrogated to the right of said incumbrances, both by contract and in equity.

Seventh. These defendants William and Mary Miller admit that on the 10th day of November, A. D. 1873, they executed, and on the 7th day of February, A. D. 1874, there was filed for record in the office of the recorder of deeds in Atchison county, in the State of Missouri, a deed of trust, a copy of which is filed with said bill, purporting to convey to the defendant William L. Patterson all of the lands in said Atchison county set out in said complainants' bill, except said southeast quarter of section twenty-four; but they deny that said conveyance was for the alleged purpose of securing to the said Mary Miller any pretended indebtedness from said William to said Mary Miller, of the sum of sixteen thousand dollars with interest, and they charge that sum had been, prior to said time, loaned to the said William Miller by the said Mary Miller, from moneys realized from sales of her own, sole and separate estates real in the States of Pennsylvania and Missouri, and turned over for his use and benfit in good faith, to pay the purchase money and to remove incumbrances from said Atchison county lands, and done and made in good faith, without any knowledge or information or belief that said William Miller was indebted, or in failing circumstances, and which said trust deed, they still charge and say, did truly represent that said moneys, so owing by said William to said Mary, were received from the sale of the individual property of the said Mary Miller, and used by her husband in the payment for the real estate in said deed of trust described.

And the other defendants say, in reference to said allegations, charges and statements last aforesaid, that they have sufficient knowledge and information thereof to form a belief that said deed of trust was made in good faith to secure said Mary Miller in the amount of money loaned him by her out of her individual, sole and separate property and effects, and they never were otherwise informed thereof than by complainants' bill.

All these defendants admit that said deed of trust provided for a foreclosure, in default of payment by said Miller, by said trustee William L. Patterson, or in case of his absence, death, or refusal to act by the then acting sheriff of Atchison county, Missouri.

Eighth. These defendants, further answering, all say and charge that said deed of trust was made in good faith for the purposes therein expressed, to secure an indebtedness to said Mary Miller, for and on account of moneys derived from her sole, separate and individual estate, and used by said William for his own purposes, to pay for said lands and remove incumbrances contracted to pay for the same, and further charge that said deed of trust was not executed for the purpose, or with the intent to hinder, delay or defraud the creditors of said William Miller of their lawful actions, damages, forfeitures, debts or demand, or either of them or said complainants, or either of them or any one, to defraud or otherwise wrong; and further deny that any of these defendants ever knew or carried out any fraudulent purposes of said deed of trust; or ever knew, were informed or believed that it was fraudulent on its face, or ever heard of it, otherwise than by complainants' bill, of being fraudulent or dishonest.

Ninth. And the defendant William Miller, as to the allegation herein contained in reference to said complainants commencing another suit, says that he is informed and believes that at the time said complainants instituted said attachment suit, they also commenced, under some provisions of the statutes of the State of Missouri, a suit in the nature of an equity proceeding, for the alleged purpose of setting aside said deed of trust on account of alleged fraud. And he is further informed that this suit is a continuation of that cause, amended and modified, and making new parties, there being only himself, said Mary Miller and William L. Patterson, as party defendants originally.

And the other defendants, answering said allegation and charge, say that they have not sufficient knowledge or information thereof to form a belief, and were never otherwise informed thereof than by complainants' bill.

Tenth. And these defendants, William Miller, Mary Miller, Eli J. Seager, Melchor H. Horn, Valentine W. Weaver and the National Bank of Catasauqua, as to the allegations and charges herein contained, say that it is not true that on the 3d day of January, A. D. 1876, the said William and Mary Miller sold said lands, including the entire amount thereinafter described, to said defendants Seager, Horn, Weaver and the National Bank of Catasauqua, and the deed made direct therefor to the said Horn and Weaver, for the consideration of thirty-six thousand four hundred dollars, covenanting against all incumbrances except said deed of trust, and at the same time pretended to assign said deed of trust to said Eli J. Seager for a pretended consideration of twelve thousand dollars; and further, it is not true that said defendants Seager, Horn, Weaver and the National Bank of Catasauqua took immediate possession of said lands, after said alleged sale, and have ever since, by themselves and agents, in connection with said Powell & Son; and further, it is not true that said Powell & Son have any interest in said lands, receiving said rents and profits, and the defendants Powell & Son say that they have no interest in said lands, and are not receiving the rents and profits thereof, and never had any notice of said suits or knowledge or information of any fraudulent character of said deed of trust, otherwise than is alleged in complainants' bill.

And the other defendants, as to said allegations and charges, say that they have no knowledge or information thereof sufficient to form a belief, and never were otherwise informed thereof than by complainants' bill.

Eleventh. And the defendants William and Mary Miller and Eli J. Seager, for answer to the allegation and charge herein contained, say that it is not true that nothing was paid for the alleged pretended assignment of said deed of trust, and they charge that said assignment was a *bona fide* transaction between said parties, wherein said Mary Miller received, and said Seager paid her, the sum of sixteen thousand dollars for her interest in said deed of trust. And the said Miller and wife, Seager, Horn, Weaver and said National Bank of Catasauqua, say it is not true that no money was paid to said Miller on the conveyance of said lands alleged to be conveyed to said Horn and Weaver; and further say it is not true that the entire amount of thirty-six thousand four hundred dollars was made up of various pretended items of indebtedness to the said Seager, Horn, Weaver and said Bank, and other indebtedness which they pretend or pretended to assume, or had assumed and paid for said Wm. Miller, or that they reserved six thousand two hundred dollars, or any other sum, on account of said attachment suit, to apply on any losses they might sustain by reason of such attachment. They charge that said purchase and conveyance to defendants Horn and Weaver were made in good faith, and their money paid therefor, without any notice of complainants' claim or their suits, in the line of their business and in due course of trade.

And the other defendants, as to said allegations and charges last aforesaid, say that they have not sufficient knowledge or information to form a belief, and never were otherwise informed thereof than by complainants' bill.

Twelfth. The defendant William Miller, as to the allegations and charges herein contained, admits that at the time the said attachment suit was instituted there was, against all of the lands hereinbefore described, a mortgage from himself and his wife, Mary Miller, to one Herman Koontz, which had, on the 24th day of September, A. D. 1874, been foreclosed and judgment rendered thereon, in said Atchison county circuit court, for two thousand and seventy-one 20-100ths dollars, including one hundred dollars for an attorney's fee, besides costs; but the said defendant says that it is not true that this said judgment was ever afterwards paid off and satisfied by said defendant Miller, but that in order to make it appear as still a lien on said lands, he caused the same to be assigned to one Joseph M. Patterson, and defendants Seager, Horn and Weaver and said National Bank of Catasauqua say it is not true that they ever procured said Koontz judgment to be assigned to said Seager by pretence or otherwise, and nothing, in fact, was paid for it except what had been included in said consideration of thirty-six thousand four hundred dollars; and said defendants, further answering, say it is not true that an assignment of said judgment or of said deed of trust, or either of them, were made for the purpose of covering up in any manner the title to said lands, or avoiding said attachment suit, or for any purpose except honesty and fair dealing.

And the other defendants, as to said allegations and charges last aforesaid, answering and say that they have neither knowledge nor information thereof sufficient to form a belief, nor were they ever otherwise informed than in complainants' bill.

Thirteenth. The defendant Eli J. Seager, as to the allegations and charges herein contained, for answer says, that he did, on or about the 20th day of September, A. D. 1876, whilst he was in possession of said lands, under the assignment of said deed of trust to him, cause the lands included in said deed of trust to be sold under its provisions and terms, for the purpose of satisfying his therein-mentioned debt, but he denies that it was any pretended debt; and he admits that said lands under said trust sale were purchased in by him as he had the right thereto, for himself, but he says it is not true that he made the purchase for the defendants Horn, Weaver and the National Bank of Catasauqua, or either of them, but charges that said deed was made to him as the only purchaser, from the fact that he purchased said lands, and was entitled to the proceeds thereof, and without any intent to further complicate the title to said lands, and whilst he was in possession of said lands, but without the knowledge that said attachment suit and suit to set aside said deed of trust were still pending, and without said defendant having retained the sum of six thousand dollars, or any other sum, for the purpose of meeting any damages sustained on acconnt of such attachment.

And the other defendants, as to said last allegations and charges so made, for answer thereto, say that they have no knowledge or information thereof sufficient to form a belief, and never were otherwise informed thereof than by complainants' bill.

Fourteenth. And all of the defendants, answering the allegations and charges herein set forth, say that they have no knowledge or information as to whether said forty acres of land in Nodaway county is not included in either said attachment or deed of trust, or otherwise, or whether it is reasonably worth seven hundred dollars or a hundred dollars, or whether said southeast quarter of section twenty-four is not included in said deed of trust, or is reasonably worth fifty-two hundred dollars or three thousand dollars, or whether the Herman Koontz mortgage and judgment covers all the lands mentioned in complainants' bill. They therefore require proof of the same, but say it is not true that said southeast quarter of section twenty, during the time it has been occupied by defendants Seager, Horn, Weaver, etc., has been worth in rental value fifty dollars per month, or even twenty, or the rents and profits of the lands covered by said deed of trust have, during the time Seager received the rents and profits thereof, were reasonably worth two hundred and fifty dollars, or more than thirty dollars, per month.

Fifteenth. These defendants, for answer to the allegation herein contained, say it is not true that said purchasers Seager, Horn, Weaver and the National Bank of Catasauqua, have been defending this suit ever since their alleged purchase of said lands, and defendant Seager admits that upon complainants' attempting to sell said Atchison county lands, upon an execution issued upon their aforesaid judgment, and thereby cast a cloud on the title of this defendant on the lands so purchased by him under said deed of trust, he did obtain, from the Atchison county circuit court aforesaid, an injunction enjoining and restraining complainants from selling any of said lands so claimed by him, until the termination of this suit, or until the further order of said court, which said suit has been also transferred to this honorable court.

And the other defendants, answering said allegations as to said Seager obtaining said injunction, say that they have no knowledge or information thereof sufficient to form a belief, other than is alleged in complainants' bill.

And these defendants, finally answering, the premises considered, deny all and all manner of fraudulent combination, aid or assistance, wherewith they are charged in said complainants' bill, without this, that there is any other matter, cause or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and further denying that said complainants are entitled to the relief or decree prayed for, or any part thereof, or any relief whatsoever, they hnmbly pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

VINTON PIKE,
AARON B. DURFEE, and
ALLEN H. VORIES,
Solicitors for Defendants.

And afterwards, at rules of said court, and on the 7th day of March, A. D. 1881, the following entry appears of record, to-wit:

H. F. BEAN
against
W. L. PATTERSON *et al.*

This day comes complainant and files reply.

REPLICATION.

Said reply is in words and figures as follows, to-wit:

In the Circuit Court, of the United States for the Western Division of the Western District of Missouri.

In Chancery.

HENRY F. BEAN and JOHN W. ALSOP,
Complainants,
against
WM. L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SEAGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL and ED. T. POWELL, and the NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA.

Replication.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the answer of said defendants herein, for replication thereunto say: That they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto; and that said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

JOHN H. LEWIS and
BOTSFORD & WILLIAMS,
Solicitors for Complainants.

And afterwards, at the regular May term, 1881, of said court, and on the 17th day of May, A. D. 1881, the following further proceedings were had in said cause, to-wit:

H. F. BEAN
against
W. L. PATTERSON *et al.*

Upon general application, all parties to this cause have leave until October 1st to take testimony.

And afterwards, at the regular October term, 1881, of said court, and on the 4th day of November, A. D. 1881, the following entry appears of record, to-wit:

H. F. BEAN
against
W. L. PATTERSON *et. al.*

This day come the parties, by their solicitors, and this cause being regularly called for hearing on the merits, the hearing is proceeded with and the cause submitted to the court.

And afterwards, on January 5th, A. D. 1883, it being at an adjourned day of the October term, 1882, of said court, the following entry appears of record, to-wit:

INTERLOCUTORY DECREE.

HENRY F. BEAN *et al.*
against
WILLIAM L. PATTERSON *et al.*

The following interlocutory decree is this day received and filed, to-wit:

In the Circuit Court of the United States, Western Division,
Western District of Missouri, May term, 1882.

HENRY F. BEAN *et al., Complainants,*
against
WILLIAM L. PATTERSON *et al., Defendants.*

Interlocutory Decree.

This cause came on to be further heard at this term, whereupon, upon consideration whereof, it was ordered and decreed:

I. That the deed of conveyance from defendants Mary Miller and William Miller to defendants Melchor H. Horn and Valentine W. Weaver, of date January 3d, 1876, for the lands in controversy, mentioned in complainants' bill of complaint, be declared void and is set aside.

II. That the deed of conveyance made by Henry Warneke, sheriff of Atchison county, Missouri, as trustee under the power of sale contained in the deed of trust of William and Mary Miller, defendants, to defendant William L. Patterson, trustee for the lands mentioned in said complainants' bill, dated November 10th, 1873, and filed for record in said Atchison county, February 7th, 1874, which said sheriff's deed is dated September 20th, 1876, and recorded in said Atchison county September 1st, 1876, and conveys to defendant Eli J. Seager the lands mentioned in complainants' bill be, and the same is hereby, declared void and is set aside.

III. That this cause be referred to Cyrus A. Anthony, of Maryville, Missouri, master of this court, to take and state an account of all the rents and profits of all of said real estate, and the value of said rents and profits of said real estate held by defendants, or either of them, since possession thereof was taken by them, under the said deed of trust of said William and Mary Miller to said Patterson, and the assignment thereof to Seager, and under the sale thereof as aforesaid, and under the said deed of conveyance from said William and Mary Miller to said Horn and Weaver aforesaid; and also to ascertain and state the value of any permanent improvements and repairs made by said defendants, or either of them, during the time of their said possession; also to take and state an account of all taxes, and the times of payment thereof, paid by said defendants, or either of them, on said land during said possession, and the amount of taxes on said lands now due and unpaid.

Upon the coming in of said report and the approval thereof, an order of sale will be made for all of the lands mentioned in complainants' bill, including the forty-acre tract, the northwest quarter of the northeast quarter of section fifteen (15), in township sixty-six (66), in range thirty-eight (38), in Nodoway county, which is subject to the lien of the judgment of Henry Koontz against said defendant William Miller, and excepting from said sale the southeast quarter of section twenty-four (24), township sixty-six (66) north, range thirty-nine (39) west, heretofore sold under the judgment of complainants mentioned in their said bill, and the proceeds whereof have been received by complainants.

The proceeds of said sale and the net amounts of said rents and profits of said lands, if any, received by defendants, after deducting the value of the improvements, repair made and taxes paid by them, will be applied and distributed as follows: First, to the payment of any and all taxes found due and unpaid on said lands; second, to the payment to defendants holding the same the amounts due and unpaid on said Koontz judgment and the amount due and unpaid on the judgment of H. C. Van Sycle against said William Miller, held by said defendants; third, the sum of twelve thousand dollars with interest from January 3d, 1876, to defendant Eli J. Seager, the amount for which said deed of trust of William and Mary Miller to said Wm. L. Patterson, on said lands, was assigned, for which said sum said deed of trust is declared a valid and prior lien on said lands as against complainants.

And the court doth reserve the consideration of all other equities of this cause and of the costs of this suit, and of all further directions and considerations thereof, until the coming in of said master's report. And the parties are at liberty to apply to the court as occasion may require.

A. KREKEL, Judge.

And afterwards, to-wit: on the 1st day of May, A. D. 1883, in vacation of said court, the following stipulation was filed in said cause, to-wit:

STIPULATION AS TO MASTER TO HEAR CAUSE.

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

In Equity.

HENRY F. BEAN *et al.*
v.
WM. L. PATTERSON *et al.*

It is hereby stipulated and agreed, by and between the parties to the interlocutory decree entered herein, that as the special master, C. A. Anthony, declines to serve herein, that said decee shall be amended by striking out the name of said and inserting in lieu thereof the name of John K. Cravens, regular master of said court; and further, that said Cravens may proceed at once with the hearing of said cause, and may report thereon, and his report, when made, shall be taken and treated the same as if it were the report of said special master, and said decree shall then be amended in accordance with this stipulation, and such amendment, for all the purposes of said reference, shall relate back to the date of said decree.

Witness the solicitors for said parties, this 20th day of April, 1883.

BOTSFORD & WILLIAMS and
J. P. LEWIS,
Solicitors for Complainants.
DURFEE & PIKE,
Solicitors for Defendants.

And afterwards, at the regular May term of said court, A. D. 1883, and on the 29th day of May, A. D. 1883, the following entry appears of record, to-wit:

MASTER'S REPORT.

HENRY F. BEAN
against
W. L. PATTERSON *et al.*

This day comes John K. Cravens, a master in chancery of this court, and files report.

Said report is in words and figures as follows, to'wit:

In the Circuit Court of the United States for the Western District of Missouri, Western Division.

HENRY F. BEAN *et al.*,
Complainants,
vs.
WILLIAM L. PATTERSON *et al.*,
Defendants.

The undersigned master in chancery would most respectfully report that on the 1st day of May, 1883, the complainants, by their solicitors, and the defendants, by their solicitors, appeared before me and filed their stipulation in writing, herewith returned, substituting me in place of the special master to whom the matter of taking an account in the above cause was referred by decretal order, certified copy of which is herewith returned. Thereupon the matters of reference in said order specified were taken up and submitted.

On examination of the proofs, I find that the southeast quarter of section 24, township 66, range 39, is not included in the deed of trust dated November 10th, 1873; and from this fact I shall keep the items relating to it separate from those relating to the lands embraced in the deed of trust.

The defendants, by their agents, took possession of the lands in controversy in January or February, 1876, and have continued in such possession to the present time. At the time defendants took possession, the southeast quarter of section 24, township 66, range 39, and the south half of section 19, township 66, range 38, were enclosed by one exterior fence, and were used as one farm. At that date, the remainder of the lands in controversy were not fanced, but composed a part of the general open range of the country for any cattle running at large.

The improvements made by defendant on the southeast quarter of section 24, consist chiefly of repairs made upon buildings found thereon by defendants, when they took possession, and a well dug by defendants. The testimony shows these to have cost defendants $350, The dates at which these improvements were made is not shown.

By stipulation in writing, signed by counsel and filed with me, herewith returned, it was agreed that in 1876, the defendants reduced to cultivation, on the southeast quarter of section 24, ten acres of land, and in the same year, reduced to cultivation on the south half of section 19, forty acres; and that in 1877, the defendants reduced to cultivation, on south half of section 19, eighteen acres more. The testimony shows that the lands so brought into cultivation were covered with a scrubby growth of timber, and that to reduce these lands to cultivation cost defendants $5.00 per acre, making the value of reclaiming and reducing said land to cultivation, on the southeast quarter of section 24, in 1876, $50.00; and of lands reduced to caltivation on the south half of section 19, in 1876, $200, and in 1877, $90.

The defendants, in 1876, built one house on east end of south half of section 19, at cost of $300; in same year they made repairs upon another house on same land, at cost $140. In 1877, they built house in northeast corner of section 25, at cost $350.

In the spring of 1879, defendants built, on the south side of original enclose, one mile and three-quarters of fence, making new enclosure. This fence cost 55 cents per rod, amounting to $364. In the same year, they built two miles fence, making new enclosure on north side of original, at cost 65 cents per rod, amounting to $416. Of the new enclosure on south side, 55 acres were put to corn in 1879, and 70 acres in 1880. Whether the area reduced to cultivation has since enlarged, does not appear.

Defendants have paid taxes on the southeast quarter of section 24 as follows: for 1876, $33.75; for 1877, $18.60; for 1878, $17.52; for 1880, $20.64. It does not definitely appear whether the taxes on this tract for years 1879, 1881 and 1882 are paid; or if paid, by whom paid. Defendants have paid taxes on lands in controversy, other than the southeast quarter of section 24, as follows: for 1876, $112.74; for 1877, $98.93; for 1878, $77.99. The taxes on these lands for 1879, 1880, 1881 and 1882 are not paid. The taxes on these lands for 1879, $177.54; for 1880, $147.28; and the taxes on northwest quarter of northeast quarter section 24, for 1870 and 1873, $25.00, were, with their penalties, reduced to judgment September 26th, 1880, amounting to $407.00, and costs taxed at $28.40. The taxes for 1881, $100.72, have penalties added, $24.22. The taxes for 1882, $118.26, have penalties added, $11.48. The items of taxes as above set forth were agreed upon at the submission.

The accounts, with respect to the separated parcels, stand as below:

Improvements made on southeast quarter section 24, date not known	$350 00
Breaking 10 acres in 1876	50 00
Taxes paid in 1876	33 75

Taxes paid in 1877	$18 60
Taxes paid in 1878	17 52
Taxes paid in 1880	20 64

Improvements made on lands other than southeast quarter of section 24:

Buildings on south half 19, 1876	$440 00
Breaking 40 acres, 1876	200 00
Breaking 18 acres, 1877	90 00
Building on northeast quarter 25, 1877	350 00
Fencing south side, 1879	364 00
Fencing north side, 1879	416 00
Taxes paid, 1876	112 74
Taxes paid, 1877	98 93
Taxes paid, 1878	77 99

Taxes unpaid on southeast quarter of section 24 not ascertained.

Taxes unpaid on other lands	$661 66
Accrued costs, on judgment	28 40

The proofs show that about one-third of the southeast quarter of section 24 has been in cultivation, and, with its buildings, was worth $3.00 per acre per annum, making $160 per year; and the remaining two-thirds for pasturage were worth $1.50 per acre per year, making $160. Total yearly rental value, $320.

The proofs show that when defendants took possession of the south half of section 19, there were subject to cultivation about 117 acres, and the rental value was $2.50 per acre; balance in pasture at $1.50 per acre. The year defendants took possession, 1876, they brought 40 acres more into cultivation, and in 1877 18 acres more. Rental value to February, 1877, $617.00; to February, 1878, $647.00; from February 1, 1878, to the present time. $665.00 per annum. The rental value of 280 acres pasture land on north side, at $1.50 per acre, $420 per annum from spring of 1879 to present time. Rental value of 55 acres in cultivation on south side, in 1879, $2.50 per acre, $137.50; balance 145 acres in pasture, $216.50; total to February 1, 1880, $354. Rental value of 70 acres in cultivation from February 1, 1880, to present time, $175 per year; balance 130 acres in pasture, $195 per year, making yearly rental value from February 1, 1880, to present time, $370.

In order that the court may make such adjustment as to interest as it may see proper, the following tables, showing yearly balances, are made:

I. As to southeast quarter section 24:

1877, Feb. 1.	Defendants credited with improvements	$400 00	
	With taxes paid	33 75	$433 75
	Complainants credited with rent,		320 00
	Balance to defendants		$113 75
1878, Feb. 1.	Defendants credited with taxes paid	$18 00	
		$132 35	
	Complainants credited with rents	320 00	
	Balance to complainants		187 65
1879, Feb. 1.	Complainants credit, rents	$320 00	
	Defendants credit, taxes	17 52	
	Balance to complainants		302 48
1880, Feb. 1.	Complainants credit, rents	$320 00	
	Defendants credit	00 00	
	Balance to complainants		320 00
1881, Feb. 1.	Complainants credit, rents	$320 00	
	Defendants credit, taxes	20 64	
	Balance to complainants		299 36
1882, Feb. 1.	Complainants credit, rents		320 00
1883, Feb. 1.	Complainants credit, rents		320 00
	Sum of balances, without interest		$1,749 49

Complainants to be credited with rentals on southeast quarter section 24, township 66, range 30, from February 1, 1883, at rate $320 per year.

II. As to remainder of lands.

1877. Feb. 1.	Defendants credited with improvements	$600 00	
	With taxes paid	112 74	$712 74
	Complainants credited with rents,		617 00
	Balance to defendants		$95 74

1878, Feb. 1.	Defendants credited, improvements	$440 00	
	Taxes	98 93	$538 93
			$634 67
	Complainants credit, rents		647 00
	Balance to complainants		$12 33
1879, Feb. 1.	Complainants credits, rents	$665 00	
	Defendants credits, taxes	77 99	
	Balance to complainants		587 01
1880, Feb. 1.	Complainants credits, rents	$1439 00	
	Defendants credit, fencing	780 00	
	Balance to complainants		659 00
1881, Feb. 1,	Complainants credits, rents		1455 00
1882, Feb. 1,	Complainants credits, rents		1455 00
1883, Feb. 1.	Complainants credits, rents		1455 00
	Sum of balances without interest,		$5623 34

Complainants to be further credited with rentals at rate $1455 per year from February 1st, 1883.

The complainants contended in argument that defendants were chargable with rent upon the entire body of lands embraced in the deed of trust, from the date they took possession, in January, 1876, to the present time, regardless of the fact that a large part of the lands were not then under fence, but constituted part of the common pasturage of the community. This view I declined to adopt, and in the computations reported have charged the defendants rents from the dates at which, by enclosing the lands, they made exclusive use thereof.

As the various liens upon the lands included in the deed of trust bear interest at different rates, I have ascertained the balance pro and con at end of each rental year, in order that the court may allow on each balance interest at same rate as the debt to which it will apply same.

For his services in this matter the master respectfully asks the court to allow him the sum of $200.00.

Most respectfully submitted.

JOHN K. CRAVENS,
Master in Chancery.

And afterwards, on the 4th day of June, A. D. 1883, it being at rules of said court, the following entry appears of record, to-wit:

COMPLAINANTS' EXCEPTIONS TO MASTER'S REPORT.

H. F. BEAN
vs.
W. L. PATTERSON *et al.*

This day come complainants, by their solicitors, and file exceptions to the report of master.

Said exceptions are in words and figures as follows, to-wit:

In the Circuit Court of the United States, for the Western Division of the Western District of Missouri, at the May term, 1883.

HENRY F. BEAN *et al.*, *Complainants,*
against
WILLIAM L. PATTERSON *et al.*, *Defendants.*

Complainants' Exceptions to Master's Report.

Now at this day come complainants herein, by Botsford & Williams, their solicitors, and except to the finding and report of John K. Cravens, Esq., master in chancery, to whom said cause was referred to ascertain and find the value of the rents and profits of the lands in controversy, and for cause and matter of exception, state:

I. Said master erred in not finding the annual value of all the premises in controversy, in possession of defendants, and in failing to charge defendants with the annual rental value of all of said premises, from the time of taking possession thereof, as found in said report.

II. Under the findings of the master in said report, defendants took possession of the lands in controversy in January or February, 1876, and have continued in possession thereof to the date of his report, and defendants are chargable with the annual rental value of all of said premises since that date, but said master has failed to charge defendants with the rental value of said premises from the date of said possession during that time, and has erred in his report in only finding and charging defendants with the rental value of said premises from time to time, as the same were brought into cultivation and actual exclusive use thereof by defendants.

Wherefore, complainants pray that said report may be referred to said master to find the facts and make the charges against said defendants as herein excepted to.

BOTSFORD & WILLIAMS,
For complainants.

And afterwards, on the 7th day of August, A. D. 1883, it being in vacation of said court, the following decree appears of record, to-wit:

FINAL DECREE AND ALLOWANCE OF APPEAL.

In the Circuit Court, of the United States for the Western Division of the Western District of Missouri.

HENRY F. BEAN and JOHN W. ALSOP, *Complainants.* *vs.* WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SEAGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL, ED. F. POWELL and THE NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, *Defendants.*	In Chancery.

Final Decree.

The exceptions to the master's report in this cause, filed herein by the complainants, coming on at this time to be heard, and the same being submitted to the court, upon due consideration thereof, the court doth now order that the same be, and they are hereby, overruled.

And this cause came on at this term for further and final hearing, and was argued by Botsford & Williams and J. P. Lewis, counsel for complainants, and Vinton Pike and A. H. Vories for defendants, and thereupon the court doth order and adjudge that the interlocutory decree heretofore given and made in this cause be and the same is hereby amended in accordance with the stipulation of the parties to this cause, in writing made and filed herein, substituting the regular master of this court, John K. Cravens, Esq., in the place and stead of Cyrus A. Anthony, Esq., special master, appointed in and by said interlocutory decree; and the report of said John K. Cravens, Esq., master aforesaid, made and filed in accordance with said stipulation, is in all things confirmed.

And it is further ordered, adjudged and decreed, as to the matters reserved in said interlocutory decree for further consideration, that the judgment and mortgage debt, which was a lien upon the land in controversy, in favor of one Henry Koontz, and which was paid by and assigned to the defendants Horn and Weaver, and the lien in favor of one Van Sycle, also paid by and assigned to said defendants Horn and Weaver, are valid and subsisting liens upon said lands as against the complainants, and that the said defendants are entitled to be paid the same in preference to the claims of any other parties to this action; that is to say, on the first of the above-named claims or debts the sum of $2070, with interest thereon at the rate of six per centum per annum from the 29th day of September, 1874, till the date of filing the master's report herein, to-wit: the 29th day of May, 1883, less one-fourth said claim, otherwise satisfied as hereinafter decreed, and on the second of the above-named claims or debts the sum of $700, with interest thereon at the rate of six per cent from the 3d day of January, 1876, till the date of filing said report or until said claims are paid, as hereinafter stated and decreed.

And it is further ordered and decreed, as to the claim of Eli J. Seager, founded upon the deed of trust made by William Miller to defendant Patterson in trust for defendant Mary Miller, and assigned by said Mary Miller to said Seager, is a valid and subsisting indebtedness and lien upon said lands in favor of said Seager for the full amount expressed in said deed of trust, to-wit: $16,000, with interest thereon from the 25th day of June, 1871, till the date of filing the said master's report, at the rate of six per cent per annum; and said interlocutory decree, so far as it relates to the amount of said Seager's lien and preference, is modified and amended so as to allow to him the full amount of said assigned debt, as above ordered; and said Seager is hereby declared entitled to be first paid the amount of said debt in this accounting, after the satisfaction of said claims originally held by Koontz and Van Sycle as aforesaid.

And it is further ordered and decreed, that one-fourth part of the amount of said Koontz mortgage judgment ought to be, and is hereby declared to be, satisfied out of the southeast quarter of section 24, township 66, range 39, of the lands described in said judgment, said land having been purchased by the defendants herein upon an execution sale based upon complainants' judgment recovered against defendant Wm. Miller, which sale was subject to said mortgage judgment, and said one-fourth part being the proportion which said lands should bear of said judgment debt.

And the court doth further declare and find that, upon computing the interest upon said several claims, above adjusted, and in the order above named, with annual rents and applying as credits thereon on the 1st day of February of each, the rents and profits accrued to the defendants, as shown by the master's report herein (after deducting therefrom the taxes and improvements on said lands, paid and made by defendants,) and after deducting from said Koontz judgment the one-fourth part thereof, borne by and charged to the southeast fourth of section 24 as aforesaid, there is due upon said Koontz judgment $2,344.28 at date of the master's report herein, and Van Sycle debt and lien has been fully paid to defendants, and upon this accounting nothing remains due thereon, by reason of its liquidation in the manner aforesaid; and further, that applying the remainder of the rents and profits reported by the master aforesaid, after the satisfaction of said Van Sycle debts to the credit of said debt and lien of said Seager, a balance remains due to said Seager, on account of his said debt and lien, of $21,529.64, which becomes, and is hereby declared to be, a prior lien upon all the real estate described in the deed of trust assigned to him by Mary Miller as aforesaid, subject to taxes hereinafter mentioned, and any balance which may be due on the said Koontz mortgrge judgment after applying to its satisfaction the 40 acres in Nodaway county hereinafter described.

It is further ordered and decreed that the forty acres of land in the county of Nodaway, Missouri, to-wit: the northwest fourth of the northeast fourth of section No. 15, township 66, range 38, be first sold by the commissioner hereinafter named, at the court house door of Nodaway county aforesaid, during a session of a circuit court for said county, and apply the proceeds thereof towards the satisfaction of said Koontz mortgage judgment above adjusted and stated. Said sale to be made as lands are sold upon execution at law.

In this accounting the penalties paid by defendants on redemption of said lands from delinquent taxes and interest and costs accrued thereon, and all rents and profits received by defendants from the southeast quarter of section 24 aforesaid, since their purchase of the same at the execution sale in which the complainants herein were plaintiffs and said William Miller defendant, and also all taxes, improvements and expenditures thereupon since said purchase have been disallowed.

And the court doth further declare and find that there is due the complainants from William Miller, on account of the judgment set forth in their complaint and recovered against him in the circuit court for Atchison county, Missouri, the sum of $17,161.03, which is a lien upon said lands subject to the liens aforesaid and the taxes hereinafter mentioned.

It is further ordered, adjudged and decreed that the lands in controversy—to-wit: the northwest quarter of the southeast quarter and the west half of the southwest quarter of section No. eighteen (18), the west half of the northwest quarter and the south half of section No. nineteen (19), and the southeast quarter of the southwest quarter of section No. twenty-eight (28), in township sixty-six (66), of range No. thirty-eight (38); the east half and northwest quarter of the northeast quarter of section No. twenty-four (24); the east half of the northeast quarter, the northwest quarter of the northwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), all in Atchison county, Missouri, be sold as lands are sold upon executions at law, by the

Marshal of this district, who is hereby specially appointed and authorized as commissioner so to do, at the front door of the court house of Atchison county, in the State of Missouri, for cash in hand, which sale shall be conducted during the session of a circuit court for said county of Atchison, and said commissioner shall receive the proceeds of such sale, and thereout shall pay first the taxes now remaining unpaid and assessed and levied against said above-described lands as specified in the master's report, and, 2d, by any balance remaining on said Koontz judgment after applying proceeds of the Nodaway county land aforesaid; and, 3d, he shall pay the amount due defendant Eli J. Seager as above ordered, with interest on said amount from the 20th day of May, 1883, at six per centum per annum until such payment, and, thirdly, the amount of said complainants' demand and judgment aforesaid, with like rate of interest for same date, and the balance, if any, shall be paid to said defendants Horn, Seager and Weaver.

Provided, That the defendants may pay the taxes due on said lands as aforesaid, with whatever legal interest and costs may have accrued thereon, and also taxes hereafter accruing, until said sale can be made, and if they do so, the commissioner, upon making sale of said property, shall, out of the proceeds, reimburse said defendants so paying, with interest at six per cent per annum from the time of payment of taxes delinquent, and same rate of interest upon taxes not delinquent from the time they would become delinquent if not paid.

It is further ordered that each party pay one-half the costs accrued and taxable in this proceeding, and which may not have been heretofore adjudged.

It is further ordered that the master to whom this cause was referred by stipulation of counsel, Mr. John K. Cravens, be allowed the sum of two hnndred dollars as compensation for his services in the matter of said reference, to be taxed as costs.

Thereupon come the complainants and pray the court to allow an appeal herein to the supreme court of the United States and to fix the amount of an appeal bond for a supersedeas, and on consideration of the premises the court doth order that said appeal be allowed upon the filing and approval of a bond for the sum of fifteen hundred dollars to act as a supersedeas.

A. KREKEL, Judge.

And on the 13th day of October, A. D. 1881, the following stipulation in regard to testimony was filed to-wit:

STIPULATION AS TO TESTIMONY.

In the Circuit Court of the United States, Western Division,
Western District of Missouri.
In Equity.

HENRY F. BEAN and others
v.
WM. L. PATTERSON and others.

It is hereby stipulated and agreed that the depositions of Melchor H. Horn and Eli J. Seager, taken at Catasauqua, Lehigh county, Pennsylvania, at the office of R. Clay Hammersly, in said town, on the 26th and 27th days of August, 1879, in the cause entitled Henry F. Bean and John W. Alsop v. Wm. L. Patterson, William Miller and others, in the circuit court of Atchison county, Missouri, and annexed to this stipulation, shall be filed in the above entitled cause and published as testimony therein the same as though taken and returned in this cause in this court, according to the rules and practice of this court, and that no objection shall be made to the reading of said testimony in this or any appellate court, except as to substance.

Dated this October 12th, 1881.

BOTSFORD & WILLIAMS and
JOHN P. LEWIS,
For Complainants.
DURFEE, VORIES & PIKE,
For Defendants.

And afterwards, on the 31st day of August, A. D. 1883, the following stipulation was filed, to-wit:

STIPULATION AS TO RECORD ON APPEAL.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

HENRY F. BEAN and JOHN W. ALSOP,
Complainants,
vs.
WM. L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SEAGER, M. H. HORN, VALENTINE W. WEAVER, the NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, W. B. POWELL and E. F. POWELL,
Defendants.

Stipulation.

It is hereby stipulated, by and between the parties to this cause, that in making the transcript of the record herein for appeal to the supreme court, the clerk of this court, in copying the depositions of witnesses, will omit the notices and commissions to take continuances and certificates of officers taking the same, and will only copy the testimony with the exhibits. In all cases where there are exhibits and papers in duplicate, the clerk will only copy one of such duplicates, and refer to it in its proper place in the record. In copying all deeds and copies of deeds filed as exhibits, the clerk will omit the certificates of acknowledgment and of recorder as to record, giving only the date of the acknowledgment and filing of such deeds for record.

JOHN P. LEWIS and
BOTSFORD & WILLIAMS,
Solicitors for Complainants.

ALLEN H. VORIES,
A B. DURFEE, and
VINTON PIKE,
Solicitors for Defendants.

TESTIMONY.

The following testimony was produced at the hearing of said cause, towit:

GEO. R. RAMSEY, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith as follows, to-wit:

Interrogatory 1. State your name, age, residence and occupation.

Answer. My name is Geo. R. Ramsey; age 64; residence Atchison county. Missouri; occupation farming and stock raising.

Int. 2. State whether you are acquainted with any of the parties to this suit, and if so, which of them?

Ans. I am acquainted with Mr. Miller and Mrs. Miller and Ed. Powell. Can't say that I am acquainted with the others.

Int. 3. State whether you ever had any business transaction with William or Mary Miller, and if so, what?

Ans. I made a trade with Mr. Miller and Mrs. Miller—sold them 440 acres of land. The land was in Atchison connty, Mo., in sections 7, 8. 17 & 18, twp. 66. R. 38.

Int. 4. About when did you sell this land, and when did you get your pay for it?

Ans. Sold sometime in the fall of '69; got $500 down, $6,000 in November of that year, and when the deed was given I got the balance.

Int. 5. About when did you make the deed, and what was the full consideration for the land?

Ans. Made the deed in the early part of '70. The full consideration for the land was about $11,000.

Int. 6. How was the first $500 paid, and who paid it?

Ans. It was paid in check by Wm. Miller, on Koontz' bank, Omaha.

Int. 7. State if you know how and by whom the other payments were ipaid.

Ans. S x thousand (6,000) paid by the same bank on check in the same way. The balance was paid by Wm. Miller, by check on Durfee & Wyatt, of Rockport, Mo.

Int. 8. In whose name was the deed made, and, if anything was said, where did Miller and his wife state the money was to come from?

Ans. Deed was made to Mrs. Mary Miller; that was the understanding at the time the trade was made. They stated that the money was to come from property that Mrs. Miller had in Pennsylvania. I think it was town property.

Int. 9. State if you know whether they had at that time sold the Pennsylvania property.

Ans. I don't know that they had sold it; don't think they had. They wanted to change that property into property here.

Int. 10. State whether or not you are acquainted with a farm in your neighborhood formerly known as the Wood & Miller farm, and if so, who now occupies it?

Ans. I am acquainted with that farm. Mr. Ed Powell occupies it now; is living on it.

Int. 11. About how large a farm is it?

Ans. Between a thousand and eleven hundred acres.

Int. 12. Who has lived on this farm during the past five or six years?

Ans. Ed Powell has lived there the most of the time, and has had charge of it.

Int. 13. About what is the rental value, per year, of said farm?

Ans. About three (3) dollars an acre.

Int. 14. About what would be tre rental value per year of the 160 acres on which the main house and barn are situated?

Ans. That is hard to say; the most of the improvements are on that. The whole farm should go together to rent well. I would say, taken alone, not worth any more than the other per acre. But when taken with the other, it adds to the value of the other land.

Int. 15. To what extent has the land outside of the 160 acres referred to been improved since its sale by Wm. Miller?

Ans. One or two small buildings and some fencing; no great amount of improvements.

Int. 16. State whether, about the time of selling this land, you had any other business transactions with Mr. Miller, and if so, what?

Ans. At the time of the selling of this land, my understanding was that Mr. Miller and Mr. Woods were in partnership. I sold them some stock on the farm, sold to Mr. Woods, sold them something over $4,400. Received the money from Woods for the property.

Int. 17. State whether you were acquainted with the 40-acre tract of land in Nodaway county, Missouri, sold by Miller with the main farm.

Ans. I am acquainted with the 40 laying over in Nodaway county. It is not broken out yet.

Int. 18. About how much is that land now worth?

Ans. About ten (10) dollars an acre.

G. R. RAMSEY.

Subscribed and sworn to before me on the day, at the place and within the hours first aforesaid.

[SEAL.] T. F. WILLIS, Notary Public.

And the said DAVID RAMSEY, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith as follows, to-wit:

Interrogatory 1. State your name, age, residence and occupation?

Answer. My name is David Ramsey; age, 34; residence, Atchison county, Missouri; occupation, farming.

Int. 2. State whether or not you are acquainted with a farm in the northeast part of Atchison county, Missouri, formerly known as the Wood & Miller farm, and if so, who now occupies and manages the same?

Ans. I am acquainted with the farm. It is now occupied and managed by Edward Powell.

Int. 3. About how many acres in this farm?

Ans. Between one thousand and eleven hundred acres.

Int. 4. About what is the rental value per year of said farm, taken all together?

Ans. About two dollars or two dollars and a half an acre.

Int. 5. About what would be the rental value per year of the 160 acres, on which the main house, barn and lots are situated?

Ans. I would put it at three or three and a half dollars per acre.

Int. 6. About how long has this farm been under the management of Mr. Ed Powell, and for whom does he manage it?

Ans. About four or five years. He manages it for the Lehigh Land Company.

Int. 7. If you know the names of any of the Lehigh Land Company, state some of them?

Ans. Eli Seager is one of the heaviest owners, and Ed. Powell's father is another, and a man by the name of Horn.

Int 8. To what extent, if any, have the lands outside of the 160 acres above mentioned been improved since Wm. Miller sold the land?

Ans. There has been one or two small farm houses and some fencing done; about three (3) miles of wire fencing.

Int. 9. About what is the present value of these houses and the cost of the new fencing?

Ans. One of the houses is a box house that cost about $90 or $100, and the other cost about $275 or $300, and the fencing is worth about 75 cents a rod.

Int. 10. What other improvements, if any, have been made on the lands referred to?

Ans. None that I know of.

Int. 11. State whether you are acquainted with 40 acres of land belonging to Seager and others, in the edge of Nodaway county, and if so, about what is its value?

Ans. I am acquainted with it. It is worth $12 to $15 per acre.

Int. 12. State whether or not the rental value of the lands before mentioned has materially changed during the last five years?

Ans. I think it would average about the same.

DAVID RAMSEY.

Subscribed in my presence and sworn to before me, on the day, at the place and within the hours first aforesaid.

[SEAL.] T. F. WILLIS, Notary Public.

And the said DAVID GORDON, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith, to-wit:

Interrogatory 1. State your name, age, residence and occupation?

Answer. My name is David Gordon; age, 50; residence, Lincoln township, Atchison county, Missouri; occupation, farming.

Int. 2. State whether you are acquainted with a farm in the northeast part of Atchison county, Missouri, formerly known as the Wood & Miller farm, and if so, how long you have known it, how far you live from it, and who now has charge of it?

Ans. I am. Have known it ten years. Live two and one-half miles from it. It is in charge of Mr. Ed. Powell.

Int. 3. About how much land is embraced in this farm, and who now owns it?

Ans. About one thousand acres. Ed. Powell owns it, or claims it. I don't know whether he has any interest there or not.

Int. 4. About how long has the place been occupied and managed by Mr. Powell?

Ans. As well as I recollect, four years this spring.

Int. 5. Who occupied and managed it the year prior to Mr. Powell's occupancy?

Ans. Mr. Wiley ran it for them the first season.

Int. 6. Ran it for whom?

Ans. I can't state just whom it was for. They told me it was for Powell and Horn. I often heard Wiley speak of them.

Int. 7. About what has been the rental value of said farm, per year, during the past five years?

Ans. I would think about $2.50 per acre.

Int. 8. About how much per acre has been the annual rental value of the quarter section on which the main dwelling house and the barns are situated?

Ans. I would say about $3 per acre.

Int. 9. State, if you can, the number or description of the quarter section referred to.

Ans. It is in section 24; the barn is in the S. E. quarter and the dwelling house is just across the line east; a part of it is in sec. 24, 66, 39, and a part in sec. 19, 66, 38.

Int. 10. What improvements, if any, have been placed on the farm within the last five years, and to what extent have they enhanced the value of the farm?

Ans. I don't know much they have broken. They have built one house, a box house worth about 90 dollars. Have done some fencing, but other fences have run down. Have built another house worth about $200. Would say the improvements have enhanced the value of the property six or seven hundred dollars. Don't think the old part of the farm is as good as it was, but some new land has been taken in. The barns and fences have run down, but the main house has been somewhat repaired or added to.
DAVID GORDON.

Subscribed and sworn to before me, on the day, at the place, and within the hours aforesaid.

[SEAL.] T. F. WILLIS, Notary Public.

MALCOM MCKILLOP, of lawful age, being by me cautioned and sworn to tell the whole truth, and carefully examined, deposeth and saith:

My name is Malcom McKillop; my age is 43 years; occupation attorney at law, and residence Rockport, Atchison county, Missouri, where I have resided for fifteen years. I am not acquainted with plaintiffs. I am acquainted with William Miller and Mary Miller. I have little or no acquaintance with Patterson. I am acquainted with M. H. Horn and Weaver. I have seen Eli J. Seager. I am acquainted with Ed. Powell, who lives in Atchison county; the other defendant Powell I don't know. I know nothing about Catasauqua Bank. I first became acquainted with William and Mary Miller in 1869 or 1870. A part of that time they resided in Atchison county, Missouri. My recollection is they came from Omaha, Nebraska, here. After they settled in this county they resided on what was then known as the Wood and Miller farm, situated in the northeast part of Atchison county, Missouri.

State if you know how that farm came to be known as the Wood and Miller farm.

Because it was owned by James Wood and William Miller.

Who first improved and resided upon said farm, and how long was it before Miller first lived there?

James Wood first improved the farm, and it was about two years from the time Wood commenced improving the farm until the Millers lived there.

State if you know what became of James Wood's interest in the farm. [Objected, for the reason that there is better evidence to prove the same fact.]

He sold it to William Miller, I think, in the year 1870. [Answer objected to for the reason that if such fact exist it can be shown by the recorder's records of Atchison county.]

State if you know what form of deed was made and what interest was intended to be transferred in the sale from Wood to Miller. [Objected to for the reason that there is better evidence to prove the same facts.]

A quit-claim deed, intended to convey a half interest. [Answer objected to for the reason the deed of record of same is the best evidence.]

Who wrote the deed from Wood to Miller?

I think I did.

State if you remember whether any money was paid by Miller to Wood at the time of executing said deed. [Objected to for the reason that the question is leading.]

I do not remember anything about it,

What disposition, if any, did William Miller make of the Wood and Miller farm, and who now occupies the same? [To that part of the question in regard to the disposition of the farm, objected to, for the reason that the deed is the best evidence of the fact.]

William Miller sold the farm to Horn & Weaver. One Ed. Powell occupies the land now. [So much of the answer objected to as refers to the sale of the land, for the reason that the deed is the best evidence of the sale.]

State whether or not you ever saw a deed of trust executed by William and wife, in 1873, to William L. Patterson, purporting to secure sixteen thousand dollars to Mary Miller, and if so, in whose possession did you see the same, and where was it?

I saw such deed of trust. I saw it at the time of the transfer of the Miller lands to Horn and Weaver, in the possession of Mary Miller.

You may state what was done with that deed of trust at the time of the transfer you mentioned.

It was assigned, in writing, to Eli J. Seager or to Catasauqua bank; I think to Seager. [Objected to for reasons their answer discloses better evidence by which the same may be proven.]

Who wrote the assignments on the deed of trust; to whom was the deed of trust delivered after assignment; and if there was a note accompanying the deed of trust, and what was done that?

I do not remember distinctly who wrote the assignment on the deed of trust, but think quite likely I did. I think the deed of trust was delivered to Horn, to be by him delivered to Seager. I do not remember whether there was a note or not; if there were, it was delivered to Horn.

At what place were the transfers to Horn and Weaver, and the assignment to Seager, made, and who of the parties were present?

It was transacted at the law office of Durfee, McKillop & Co., in the town of Rockport, Atchison county, Missouri. Parties were Horn, and I think Weaver, William Miller and Mary Miller.

Who had charge of the business on the part of Horn, Weaver and Seager?

M. H. Horn.

If you know from any other source than privileged professional communication, you may state whether any other parties were interested in these transactions than those whose names appear upon the papers connected therewith?

Neither professionally nor otherwise do I know of any other persons or parties being connected with or interested in the transaction, except the parties whose names appear in the papers connected with the transaction of the transfer of the Miller lands and the Mary Miller deed of trust to Horn, Weaver and Seager.

State whether any money or property was passed from either Horn, Weaver or Seager to either William or Mary Miller at the time of those transfers.

There was money passed in the shape of drafts, I think, and may be some currency.

To whom were the money or drafts paid?

It was paid to William Miller or Mary Miller, or both. I can't say to who. or whose benefit, nor can I say what amount.

You may state whether or not there were any settlements made or liabilities on the part of William Miller taken into account in making up the consideration for those transfers.

My best recollection is that there was some liability or liabilities of William Miller taken into account in the transfer of the Miller lands to Horn and Weaver.

You may state, if you know, how long Mr. Ed. Powell has occupied the Wood and Miller farm, and, if you can, state for whose benefit he has been managing it.

He has occupied the premises about five years. I don't know for whose benefit he is managing it.

About how large a farm is this?

I think about eleven hundred acres.

Upon which portion are the principal improvements?

The principal improvements are on the southeast quarter of section twenty-four, township sixty-six, range thirty-nine.

About how much of this farm is enclosed with fence, and when and how much under cultivation?

I don't know. MALCOM McKILLOP.

Subscribed and sworn to before me on the day, at the place and within the hours first aforesaid.

[SEAL.] JAMES M. OSBORNE, Notary Public.
Commission expires February 27, 1883.

And the said JOHN P. LEWIS, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

My name is John P. Lewis; my age is thirty-six; my occupattion is a lawyer; I now reside, and have resided, for the past thirteen years, in Rockport, Missouri. I have a general acquaintance with several parties to this suit, but I am not intimately acquainted with any. I have known William and Mary Miller since some time in 1869. I have seen William, or Colonel Miller, as he was called, quite a number of times during the first three or four years of my acquaintance. He first lived or boarded a short time in this place after coming from Omaha, where he formerly resided. He afterwards moved upon and occupied, for two or three years, a farm in the northeast part of the county, known as the Wood and Miller farm. I do not know when he left it, but think some time before its sale. I have been acquainted with Henry F. Bean for about five years, he having attended two or three terms of the Atchison circuit court since this suit was instituted. He now resides in Jackson, Michigan. I met, once, Mr. Alsop on business in connection with this case, in the city of Marian, Ohio. I am acquainted with M. H. Horn and Eli J. Seager. I saw them both in Pennsylvania and Missouri. M. H. Horn is cashier—or was, when I saw him—of the National of Catasauqua, Pennsylvania. I have been in the banking house, and met some other parties connected with the institution, but Mr. Horn is the only officer with whom I am acquainted. I have met W. B. Powell. I am tolerably well acquainted with his son Ed. Powell, who for the past four years and over has resided upon the property involved in this suit, or rather, has had charge of the property. I have no acquaintance whatever with either Patterson or Weaver. I have been, since the fall of 1874, acting as the attorney of the plaintiff in this suit, both in the case which they instituted by attachment against William Miller, and in the case to set aside the deed of trust from Miller and wife to Patterson for Mrs. Miller's benefit, and of which the present suit is a continuation. As such attorney, I have had almost the entire management of both cases, and especially the latter case, not only in court, but in looking up and securing the evidence to be used in the trial of the case. The plaintiffs have never had any interest in the lands involved in this suit, except such as may have grown out of the two suits I have mentioned. They have never resided in this county, or near the lands involved in this suit.

(The lands which compose the Wood and Miller farm, as I learned from Mr. Wood, and I think also, from Mr. Miller, were purchased from time to time during the years about 1868 and 1869, and were held by them in copartnership, except as to a few pieces of this farm. I do not know in whose name the Wood and Miller farm was originally purchased, but it was purchased in parcels. I have heard Mr. Wood speak of the circumstances while the partnership was in existence, and I have heard William Miller incidentally speak of the existence of such a copartnership, but never heard any detailed statement as to the time or manner of acquiring the property, nor as to how much property they had.) [In the bracket marked in red is objected to for the reasons that it is hearsay and secondary evidence.]

The farm proper contains, I think, a little over a thousand acres, and there one or two odd forties situated away from the main body of land which are not improved, one of which is across the line in Nodaway county, making a total number of acres about eleven hundred. Most of the farm was improved before Miller left it, and, with one exception, all the valuable buildings had been erected. The main dwelling house and barns are situated, as near as I now remember, all on the southeast quarter of section twenty-four, township sixty-six, of range thirty-nine, not covered by the deed of trust from Miller and wife to Patterson, for Mary Miller's benefit.

I am not sufficiently acquainted with the fencing about the place to tell much about what improvements or injuries that may have been made or done since Miller sold the farm. The exception I refer to is a small but tolerably neat dwelling house, worth three or four hundred dollars perhaps, which the present claimants have built on section twenty-five, in said township and range. The farm is a very valuable one, well and desirably located for farming and stock raising, and ought, I should think, to be worth an average of about two and a half dollars per acre as its annual rental value. I would think this a moderate estimate for the use of the farm.

While William Miller lived here he seemed to be rather hard pressed at times for money. I know of his having been sued on several occasions. I was one of the attorneys in a suit instituted by the State Bank of Nebraska upon a note and mortgage given by William Miller to James Wood for a balance arising in some manner out of the estate sale of Mr. Wood's interest in the partnership to William Miller, in which there was about four thousand dollars involved. I also was the attorney in a couple of other suits instituted against him by the Council Bluffs Iron Work, in which the amount involved, as near as I can call to mind, some twelve or fourteen hundred dollars.

(Since the institution of the present suit I have made various inquiries to ascertain the financial condition of William Miller. So far as I can find, he is insolvent; and so far as there is any general repute npon that subject in this county, it is to the effect that he has no available assets from which any considerable debt could be made.) [The part enclosed in red bracket objected to, for reason that evidence is hearsay and secondary.]

(I have had inquiries made in the State of Ohio, in Kenton, where Miller at one time resided since leaving here, and from which I learned some town property had been conveyed to Mary Miller at a named consideration of twenty-five hundred dollars. I have not the original deed of conveyance in my possession nor under my control, but I have an exemplified copy from the records of Hardin county, Ohio, where the property is situated, which I offer in evidence, to be marked "Exhibit A," and attached to my deposition. The same property appears to have been conveyed in 1877, some two years after its purchase by William and Mary Miller, to one John Stillings. The original conveyance is not in my possession nor under my control, but I have an exemplified copy of the deed from the records of said Hardin county, which I offer in evidence, to be marked "Exhibit B," and attached to my deposition.) [The words and lines enclosed in red brackets objected, for reason that is hearsay and secondary evidence, and for the further reason that there is not sufficient reason showing to excuse parties from not producing the original deed, and that exhibits are not properly exemplified.]

(I searched in person, with the assistance of the register, the records Lehigh county, Pennsylvania, but could find no property in the name of William Miller, though I found he had, at different times prior to 1873, owned tracts of land in that county.) [Words and lines in red brackets objected to, for the reason that it is immaterial and secondary evidence.]

(I have had the records of conveyances in Douglass county, Nebraska, where the city of Omaha is situated, examined, from which I learned there was a conveyance upon record in said county from Rollins C. Smith and wife to William Miller, for real estate in Omaha, in which the consideration mentioned was forty-one hundred dollars, which deed purports to have been made in 1868. The original deed is not in my possession nor under my control, but I have an exemplified copy which I offer in evidence, to be marked "Exhibit C," and be attached to this my deposition.) [Objected to, for the reason that it is hearsay and secondary evidence and irrelevant, and for reason no sufficient excuse is shown for not producing the original deed, and that the exhibit is not properly exemplified.]

(There is on record in said county a deed from William Miller and wife to Edward Creighton, dated December 19th, 1870, conveying the same lands, at the consideration of ten thousand dollars. I have not the original deed in my possession or under my control, but I have an exemplified copy from the records of said Douglass county which I offer in evidence, to be marked "Exhibit D," and attached to my deposition.) [Same objection made to this as made to the evidence just preceding this.]

(About the time or within a few months prior to the sale, by Mr. Wood, of his interest in the Wood and Miller farm, to William Miller, one G. R. Ramsey sold a farm of four hundred and forty acres, in the same neighborhood, to William or Mary Miller, and I find upon record a conveyance of the same, purporting to be made in February, 1870, to Mary Miller, at the consideration of eleven thousand dollars. I find also upon record a mortgage for ten thousand five hundred dollars, covering the same land, purporting to be executed in November, 1869, by William and Mary Miller to G. R. Ramsey. I find upon record a deed of trust, dated March 1st, 1871, given upon the same lands, by William and Mary Miller, to A. E. Wyatt, as trustee, to secure five thousand one hundred and forty dollars to Joseph L. Patterson. There is also on record a conveyance for the same lands, made in February, 1872, by Mary Miller and William Miller, to Eli J. Seager, M. H. Horn, V. W. Weaver, in which the consideration named is fifteen thousand five hundred dollars.) [Objected to, for the reason that it is immaterial, irrelevant and secondary evidence.]

I have heard M. H. Horn and Eli J. Seager state, in a former deposition, that the real consideration was eleven thousand dollars, six thousand of which was in Allentown rolling mill stock, out of which William Miller realized five thousand dollars in cost, and the whole of which was placed to William Miller's credit in the National Bank of Catasauqua, and was drawn out to pay his check and notes at the Bank. [Objected to for the reason that it is secondary evidence, immaterial and irrelevant.]

(I find on the record in Atchison county, a quit-claim deed for the Wood and Miller farm, executed March 24th, 1880, by

James Wood and wife to William Miller, for the consideration of six thousand dollars. I find upon record a deed of trust conveying the same lands, executed September 28th, 1871, by William Miller to Archibald E. Wyatt as trustee, to secure twenty-five thousand dollars to Eli J. Seager. I have examined the record of this deed and compared a copy I shall hereafter furnish with such record, and find that the dates given in the copy are the same as those in the record. I find upon record in said county, in the recorder's office, an abstract of the attachment made in the case of Bean & Alsop against William Miller, filed October 21, 1874.) [Objected for the reason that it is secondary evidence, irrelevant and immaterial.]

As to the deeds, mortgages and instruments which I have mentioned as of record in this county, I would state that the original instruments are not in my possession nor under my control, and that I have been the sole party on the part of the plaintiffs to look up and search for this evidence. I therefore offer authenticated copies of these deeds, mortgages and instruments, to be marked in the order I have named them: "Exhibit E," "Exhibit F," "Exhibit G," "Exhibit H," "Exhibit I," "Exhibit J" and "Exhibit K," to be attached to this deposition as evidence in this case. [Objected to for reasons no sufficient excuse is shown for not producing the originals, and exhibits are not properly exemplified.]

I have also authenticated transcripts from the records and files of Atchison county circuit court, of the case of State Bank of Nebraska against William and Mary Miller, filed on the 14th day of April, 1871; a transcript of the case of Herman Koontz against William and Mary Miller, filed March 3d, 1874, and a transcript of the attachment case of Bean & Alsop against William Miller, filed October 21st, 1874, which transcripts I have marked "Exhibit L," "Exhibit M" and "Exhibit N," in the order named, and offer them in evidence to be attached to this my deposition. [Objected to for the reasons that it is secondary evidence, immaterial and irrelevant, and the transcripts are not properly exemplified.]

I have examined the record of the deed of trust alleged to have been assigned by William and Mary Miller to Eli J. Seager, and find that there has been endorsed upon the margin of the original record of said deed of trust, an assignment, unacknowledged, of which I have a correct copy in the handwriting of the recorder of Atchison county, and which I have compared with the original record and know to be correct. I offer the same to be marked "Exhibit O," and attached to this my deposition. [Objected to for the reason that it is hearsay and secondary evidence, irrelevant and immaterial.]

A certified copy of the record of original deed of trust I filed with petition at the first institution of this cause.

(I was present in September, 1876, at the court house when the lands embraced in the deed of trust sought to be set aside in this suit were sold and purchased by Eli J. Seager. I had prepared a written notice notifying all bidders of the pendency of this and the attachment suits, which notice I read just before the bidding at the sale. I have in some manner lost or misplaced the notice. I have searched several times this week and last week for the same without being able to find it. If I yet succeed in finding the same I will hand it to the notary to be attached to this deposition as an exhibit, though I have but little hopes of finding the same. [Objected for the reasons that it secondary and hearsay evidence, immaterial and irrelevant.]

After I had read the written notice in full, I stated verbally that I might bid upon the land, but that if I did I wanted it distinctly understood that I did not intend to waive any objections mentioned in the notice, or any rights of the plaintiffs, and further, that the bidding would be entirely my own responsibility. The lands sold very low, and I bid on most or perhaps all the pieces sold.

In the summer of 1879 I was in the town of Catasauqua, Pennsylvania, where the defendant M. H. Horn resides, and there the National Bank of Catasauqua is situated, and near where Eli J. Seager lives. I went there for the purpose of cross-examining the taking of deposition on the part of the then defendant in this case, and also for the purpose of looking up any other facts I might chance to find. There has been some question between the opposing attorneys in this case as to the extent to which the deposition there taken are admissable in the cause as it now stands. [Objected for reasons that it is immaterial and irrelevant.]

Mr. Horn exhibited, in my presence, a memorandum or abridged statement of the items that went to make up the consideration of thirty-six thousand four hundred dollars mentioued in the deed from William Miller and wife to Horn and Weaver, for the Wood and Miller farm; to tbe correctness of which memorandum he afterwards testified. The memorandum and his testimony were both to the effect that such consideration was made up substantially of the following items: First, a debt from Miller to Horn, Seager and Weaver, of $3,000, for rents due on Ramsey farm; second, various items of indebtedness due to or at the National Bank of Catasauqua, amounting to $6,000; third, items of indebtedness due to or for which Eli J. Seager was liable as indorser for William Miller, or in some way responsible for him, to the amount of $12,000; fourth, other notes of William Miller, the especial purpose or nature of which Mr. Horn could not give, to the amount of $3,000; fifth, a note which they in some way settled for Mr. Miller, to one Enigh, for $1,500; sixth, a debt to Mr. Van Sycle, $700; seventh, two claims of about $2,000 each, which they settled with Mr. Patterson, of Illinois, one of which was a Koontz claim, making the total amount $30,200. Mr. Horn stated, either in the deposition or outside of it, that the memorandum was prepared before the settlement was entirely completed, and he stated that when they came to pay out all these liabilities they amounted to a little more than the estimates they had placed upon some of them, so that the balance of unpaid in their hands was something less than $6,000, instead of $6,200 as indicated in the memorandum. He stated in his evidence that the $6,000 was retained to meet any defficiencies of title, including an attachment suit which had been spoken of by Mr. Miller, but he did not know what attachment suit it was, whether plaintiffs' or not. Both Seager and Horn testified that their interests were not antagonistic, and that the $12,000 mentioned in the assignment of the deed of trust to Eli J. Seager represented the amount of interest or consideration which he had in the land transaction; that it was not extra, but formed a part of the $36,400 mentioned in the deed to Horn and Weaver. Mr. Seager further stated substantially the same as did Mr. Horn in regard to items which composed said $12,000. He said it was made up of liabilities of William Miller to himself, of liabilities on which he was Miller's endorser, and of liabilities which he had assumed for or liable for said Miller. Mr. Horn stated that he procured the assignment of Koontz judgment from Patterson to Seager, and stated that it was assigned in that way to meet contingencies, but did not explain what contingencies. [To all that portion of the deposition commencing on page 27 with the words "Mr. Horn exhibited in my presence a memorandum" and ending with the words, on page 30, "what contingencies," objected to, for the reason that it is secondary evidence, it appearing from the evidence given that better evidence can be had and provided, and because it is immaterial and irrelevant.]

The authenticated copies of deeds which I have heretofore offered in evidence are all copies of deeds which, if they are held by the owner entitled to hold them, are all held by parties residing outside of this State. The deed of William Miller and wife to Horn, Seager and Weaver, and the deed of trust sought to be set aside in this suit, I have heard either Mr. Horn or Mr. Seager —I think Mr. Horn—speak of holding. The whereabouts of other deeds I know nothing of, but, as plaintiffs had no interest in any of the lands, I have no reason to suppose that any of them are in their possession or under their control. Of many of these deeds I am satisfied they have no information except what has been obtained through myself, I having had, as stated before, the entire charge of looking up the evidence in this case, and having requested such documents or papers from plaintiffs as they might have, if any, a bearing on the case.

Since deposing this forenoon I have made another search for the notice I mentioned, and with better success. I now offer the same in evidence, to mark "Exhibit P," and attach to this my deposition. The writing upon the face of the paper is the notice which I read, the writing upon the back is a mere memorandum afterwards made as to the time and place when it was read. The printed extract posted to the notice is the advertisement under which the land was sold, and which was read by the acting trustee just before the sale.

At the time William and Mary Miller finally sold out in this country I think he was generally reputed to be insolvent, and I know of no other property than the property involved in this suit from which there is any chance to make so large a debt as this one, nor have I been able to find any thereof of consequence anywhere. Though for the past three or four years I have known but little of his whereabouts, or what he has been doing, and do not now know where he lives, except the affidavit for the transfer of this case to the federal court states that he is a resident of the State of Illinois. At all events, when last I knew where he lived he was not a resident of this State. [All that portion of the deposition commencing, on page 31, with the words "the authenticated copies of deeds," and ending with the words, on page 33, "he was not a resident of this state," is objected to, for the reasons that it is inferences and conclusions of the witness, and is secondary, irrelevant and immaterial.]

Cross-Examination of John P. Lewis.

At what time did you say the attachment suit was instituted by Bean & Alsop against William Miller, in the Atchison county circuit court?

I do not remember the exact words I used, but the suit was commenced in the fall of 1879, in October, I think.

I believe you stated you were the sole attorney in this case?

I did not state that I was the sole attorney, but that I had had almost the entire control and management of the attachment suit and of the present suit, and especially the latter, not only in the courts, but in looking up and procuring the evidence.

Were Bean and Alsop, or either of them, here at the time the suit was instituted?

They were not, but were represented by a man by the name of Jacob Zimmerman, whose acts were afterwards ratified by a power of attorney to him from Bean & Alsop.

Had you ever had any acquaintance with either of them prior to that time?

I never saw or heard of either of them prior to the institution of the attachment suit, and never saw either of them until the second or third term of court after the suit was instituted, when I saw Mr. Bean for the first time. I did not see Mr. Alsop until the summer of 1879, though of course I have had frequent correspondence with them.

What was the original amount for which said attachment suit was brought?

A. Something over $16,000.

What was the amount of the attachment bond required in that case?

I think the amount of the bond was between $32,000 and $33,000. A copy of the bond will be found in one of the transcripts filed as an exhibit to my deposition.

Was not the bond procured through your influence, and did you not execute the same as one of the securities?

It was. I did.

What indemnity or security did Bean & Alsop give you for the risk you assumed by reason of your executing the bond as surety? [Objected to as improper cross-examination and immaterial.]

I had no security whatever. I acted on my own judgment as to the merits of their case.

Was not this suit now pending in the federal court at Kansas City, Missouri, to set aside the deed of trust to Patterson for the use of Mrs. Miller instituted at the same time of the attachment suit?

It was instituted about the same time—one or two days later, I think. At first only Patterson, Miller and wife were made defendants; Seager was afterwards brought in, and subsequently the other defendants.

Did you not execute a bond to secure all cost that has or may accrue in this cause, aud filed the same in Atchison county circuit court? [Objected to for the reason that it is immaterial, improper cross-examination, and not the best evidence.]

I executed such a bond, but plaintiffs have so far paid all costs that accrued up to the time the case was transferred to the federal courts, and has furnished about $100 as costs and expenses which have since accrued.

Did not the money used to pay costs accrued, and the $100 which have since accrued, arise out of the sale of the southeast quarter of section 24, township 66, of range 39, being the same land not included in the trust deed to Patterson for the use of Mrs. Miller; and when said lands were sold, did you not receive the money for the sale of the same, and in settling this matter with Bean & Alsop, did you not retain out of such money the costs you speak of herein paid, and the $100 to meet cost and expenses as it might arise?

I received, as the attorney of record, the balance of the moneys arising out of the sale indicated, after deducting the costs of the attachment suit, and out of such balance I paid the expenses of the attachment suit not taxed as costs. I paid all costs which accrued at that time in the present suit, except costs which defendants had made and paid in taking depositions of Horn and Seager in Pennsylvania. And I retained, in addition to my fees charged up at that time, the sum of $100 as I have mentioned. The balance I remitted to the plaintiffs, together with the costs which they had advanced, and also which were coming to Jacob Zimmerman as a witness in the attachment case.

At the time the deposition of M. H. Horn and Eli J. Seager were taken, at Catasauqua, Pennsylvania, which are on file in this case, were you not present at the taking of said depositions as the attorney of Bean & Alsop, and cross-examine the said Horn and Seager; if so, please state if the statements that you have sworn to as made by Horn and Seager, in your examination-in-chief, are not the same statements or matter as sworn to by Horn and Seager in their depositions?

I was present at the taking of such depositions, as such attorney, and the statements referred to were made mainly and perhaps altogether in the deposition. There was, however, more or less talk that did not go into the deposition. My impression that the talk of Mr. Horn in regard to the memorandum was just before he testified on that subject. I am confident when he came to testify that he refreshed his memory from the memorandum, and may have so stated in his deposition. The deposition embraced the facts and items the same as indicated by the memorandum, so far as I now can remember. Mr. Horn's statement that he was cashier of the National Bank of Catasauqua was not the only evidence I had of that fact. I was introduced to him as such cashier.

The only time I ever had any conversation with Horn or Seager material to the case, so far as I now can call to mind, was during the two or three days we were engaged in taking said depositions, and I drew out on cross-examination, as well as I could, the facts I then thought material to the case.

Please state what interest you have in the result of this case. [Question objected to as impertinent and immaterial.]

Answer. I was to receive, as by agreement at the institution of this suit, a fee of five per cent of the amount recovered in the attachment suit in the Atchison circuit court. If the cause was carried to the supreme court, I was to have an additional fee or additional counsel, for which no particular price was agreed upon. I conducted the case alone in the supreme court. The contingency of a transfer of this case to the federal court was not provided for. I have been paid, over and above all my expenses, out of the sale before mentioned, $250.00. My interest in this case consists in the amount of fees I may receive, the liability I may incur by reason of said bond for costs, and my respect to myself as an attorney. I have done much more work than all the fees I have received, or expect to receive, are likely to amount to under the most favorable circumstances. I have pride and ambition enough to desire the success of this case, if I never receive any further compensation. JOHN P. LEWIS.

Subscribed and sworn to before me on said day, at the place and within the hours first aforesaid. My commission expires February 27th, 1883.

[SEAL.] JAMES M. OSBORNE, Notary Public.

EXHIBIT A.

Harriet Kirkpatrick, Robert Kirkpatrick. Deed to Mary Miller.

Know all men by these presents, that Harriet Kirkpatrick and Robert Kirkpatrick, in consideration of the sum of two thousand five hundred dollars ($2,500), to them paid by Mary Miller, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said Mary Miller, her heirs and assigns forever, the following described real estate, situate in said county of Hardin and State of Ohio, to-wit: In lot No. two (2), in Elizabeth Holmes' addition to the town of Kenton, as the same is designated on the recorder's plat of said addition, and all the estate, title and interest of the said Harriet Kirkpatrick and Robert Kirkpatrick, either in law or equity, of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof. To have and to hold the same to the only proper use of the said Mary Miller, her heirs and assigns forever. And the said Harriet Kirkpatrick and Robert Kirkpatrick, for themselves, and for their heirs, executors and administrators, do hereby covenant with the said Mary Miller, her heirs and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free and unincumbered, and further, that they will warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said Harriet Kirkpatrick and Robert Kirkpatrick, who hereby releases her right and expectancy of dower in the said premises, have hereunto set their hands and seals this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-five.

HARRIET KIRKPATRICK. [SEAL.]
ROBERT KIRKPATRICK. [SEAL.]

Signed, sealed and acknowledged in presence of

JOHN D. KING,
N. W. WOODWARD.

Acknowledged June 23d., 1875,

Recorded September 27th, 1875, Vol. 41, page 2.

EXHIBIT B.

William Miller and Mary Miller. Deed to John Stillings.

Know all men by these presents, that we, William Miller and Mary Miller, in consideration of twenty-four hundred dollars to us paid by John Stillings, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said John Stillings, his heirs and assigns, forever, the following-described real estate, situate in the county of Hardin, and state of Ohio, to-wit: In lot No. two (2), in Elizabeth Holmes' addition to the town of Kenton, as the same is designated on the recorded plat of said addition, and all the estate, title and interest of the said William Miller and Mary Miller, either in law or in equity, of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; to have and to hold the same to the only proper use of the said John Stillings, his heirs and assigns, forever. And the said William Miller and Mary Miller, for themselves and for their heirs, executors and administrators, do hereby covenant with the said John Stillings, his heirs and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free and unincumbered; and further, that they will warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said William Miller and Mary Miller, who hereby release all right and expectancy of dower in the said premises, have hereunto set their hands and seals, this 10th day of February, in the year of our Lord one thousand eight hundred and seventy-seven. WILLIAM MILLER. [SEAL.]
MARY MILLER, [SEAL.]

Signed, sealed and acknowledged in presence of us.

BELL MILLER.
G. E. STRONG.

Acknowledged February 10th, 1877, and recorded February 16th, 1877, Vol. 43, p. 285.

EXHIBIT C.

Smith to Miller.

Know all men by these presents, that we, Rollin C. Smith and Mary A. Smith, his wife, of Omaha, county of Douglass, and State of Nebraska, for and in consideration of the sum of forty-one hundred dollars in hand paid by William Miller, of Omaha, county of Douglass, and State of Nebraska, the receipt of which is hereby acknowledged, do give, grant, sell and canvey unto the said William Miller, all that certain piece or parcel of land known and described as follows, to-wit: Lot number six (6), in block number fifty-four (54), in the city of Omaha, county of Douglass, and State of Nebraska, as surveyed and lithographed, to have and to hold the same, to the said William Miller, his heirs and assigns, to his use forever. And we, the said Rollin C. Smith and Mary A. Smith, covenant with the said William Miller, his heirs and assigns, that we are lawfully seized in fee of the premises, that they are free from all incumbrances; that we have good right to sell the same, as aforesaid, and that we will warrant and defend the same to the said William Miller, his heirs and assigns, against the lawful claims and demands of all persons.

Signed this nineteenth day of May, one thousand eight hundred and sixty-eight.

ROLLIN C. SMITH.
MARY A. SMITH.

In presence of WATSON R. SMITH.
Acknowledged May 19th, 1868.
Recorded June 27th, 1868, Book 4, page 57.

EXHIBIT D.

Miller to Creighton.

Know all men by these presents, that we, William Miller and Mary Miller, husband and wife, of Omaha, Nebraska, in consideration of ten thousand dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto Edward Creighton, of the same place, the following-described real estate, situate in the county of Douglass, and State of Nebraska, to-wit: Lot number six (6), in block fifty-four (54), in the city of Omaha, as surveyed and lithographed, together with all the tenements, hereditaments and appurtenances to the same belonging, and all the estate, title, dower, claim or demand whatsoever of the said William Miller and Mary Miller, his wife, or either of them, of, in or to the same or any part thereof, to have and to hold the above-described premises, with the appurtenances, unto the said Edward Creighton and to his heirs and assigns forever. And I, the said William Miller, for myself and my heirs, executors and administrators, do covenant with the said Edward Creigton and with his heirs and assigns, that I am lawfully seized of said premises, that they are free from incumbrance, that I have good right and lawful authority to sell the same, and that I will, and my heirs, executors and administrators shall, warrant and defend the same unto the said Edward Creighton and his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof we have hereunto set our hands, this nineteenth day of December, A. D. one thousand eight hundred and seventy.

WILLIAM MILLER.
MARY MILLER.

In presence of BYRON REED.
Acknowledged December 20th, 1870.
Recorded December 26th, 1870, Book 10, page 325.

EXHIBIT E.

General Warranty Deed.

This indenture, made on the 14th day of February, A. D. one thousand eight hundred and seventy, by and between George R. Ramsey and Hestie Ann Ramsey, his wife, of Atchison county, Missouri, parties of the first part, and Mary Miller, of the city of Omaha, of the county of Douglass, in the State of Nebraska, party of the second part, witnesseth: that the said parties of the first part, in consideration of the sum of eleven thousand ($11,000) dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All of lot No. one (1) of the northwest quarter, and the west half of the northeast quarter, of section (18) eighteen; also the south half of the southeast quarter of section No. (7) seven, the southwest quarter of the southwest quarter of section No. (8) eight, the west half of the northwest quarter of section No. (17) seventeen, the southeast quarter of the northeast quarter of section eighteen (18), and the northeast quarter of the northeast quarter of section No. (18) eighteen, all in township No. (66) sixty-six, of range No. (38) thirty-eight, west the fifth P. M. Reserving to the said first parties forty-two feet square, including the grave-yard on said premises. To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said party of the second part and unto her heirs and assigns forever; the said party of the first part hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed, that they have good right to convey the same, that the said premises are free and clear of any incumbrances done or suffered by them or those under whom they claim, and that they will warrant and defend the title to the said premises unto the said party of the second part, and unto her heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
GEORGE R. ⋊ RAMSEY. [SEAL.]
mark.
her
HESTER ANN ⋊ RAMSEY. [SEAL.]
mark.

Signed, sealed and delivered in presence of us.

A. B. Durfee.
John D. Dopf.

Acknowledged February 16th, 1870.

Recorded February 21st, 1870, Book 14, page 402.

Exhibit F.

Know all men by these presents, that Mary Miller and William Miller, her husband, of the city of Omaha, of the county of Douglass, in the State of Nebraska, have this day, for and in consideration of the sum of ten thousand five hundred ($10,500) dollars of the said Mary Miller in hand paid, by George R. Ramsey, of the county of Atchison, in the State of Missouri, granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said George R. Ramsey, the following-described real estate, situate in the county of Atchison, in the State of Missouri, that is to say: Lot No. 1 (one) of the northwest quarter, and the west half of the northeast quarter, of section (18) eighteen; also the south half of the southeast quarter of section No. (7) seven, the southwest quarter of the southwest quarter of section No. (8) eight, the west half of the northwest quarter of section No. (17) seventeen, southeast quarter of the northeast quarter of section eighteen (18), and the northeast quarter of the northeast quarter of section No. (18) eighteen, all in township No. (66) sixty-six, of range No. (38) thirty-eight, reserving forty-two (42) feet square for a grave-yard; to have and to hold the premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said George R. Ramsey, his heirs and assigns, forever, upon this express condition: Whereas, The said William Miller, on the 20th day of November, one thousand eight hundred and sixty-nine, made and executed and delivered to the said George R. Ramsey his four certain promissory notes, described as follows, to-wit: Three notes, each for $2,000, payable to the order of George R. Ramsey, at the First National Bank of Omaha; each of said notes March first, 1870, bearing interest at six per cent per annum till paid; and one other note for four thousand five hundred ($4,500), payable at the First National Bank of Omaha, to the order of George R. Ramsey; said last-named note is due March 1st, 1871, bearing interest at the rate of 10 per cent per annum from March 1st, 1870, till paid; all of said notes signed William Miller.

Now, if the said William Miller, his executors or administrators, shall pay the sum of money specified in said notes, and all the interest that may be due thereon according to the tenor and effect of said notes, this conveyance shall be void; but if the said notes not be well and truly paid when the same become due and payable according to the tenor and effect thereof, then this deed shall remain in force; and the said George R. Ramsey or his legal representatives, or at the request of the legal holder of said notes, the then acting sheriff of Atchison county, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court house in the town of Rock Port, county of Atchison, and State of Missouri, first giving ten days' public notice of the time, terms and place of sale, and of the property to be sold, by advertisement in some newspaper printed in the county of Atchison and State aforesaid, and upon such sale shall execute and deliver a deed in fee simple of the property sold, to the purchaser or purchasers thereof, and receiving the proceeds of said sale, out of which he shall first pay the costs and expenses attending such sale, and next the amount due on the said notes, and the remainder, if any, shall be paid to to the said Mary Miller or her legal representatives.

In testimony whereof we have hereunto subscribed our names and affixed our seals, this twenty-second day of November, 1869.

MARY MILLER. [SEAL.]
WILLIAM MILLER. [SEAL.]

Duly stamped.

Acknowledged November 22d, A. D. 1869.

Recorded February 16th, 1870.

On the margin of said writing is the following acknowledgment of satisfaction, to-wit:

I, Geo. R. Ramsey, hereby acknowledge full and complete satisfaction of the mortgage herein recorded, and release the real estate therein described unto Mary Miller and William Miller, their heirs and assigns, this 1st day of April, 1871.

his
GEO. R. ⋊ RAMSEY.
mark.

Attest: A. F. TIFFANY, Recorder.

EXHIBIT G.

This deed, made and entered into this 1st day of March, eighteen hundred and seventy-one, by and between Mary Miller and William Miller, her husband, of the county of Atchison, State of Missouri, parties of the first part, A. E. Wyatt, of the county of Atchison, State of Missouri, party of the second part, and Joseph M. Patterson, of the county of Whiteside, State of Illinois, party of the third part, witnesseth: that the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, the following-described real estate, situate, lying and being in the county of Atchison, and State of Missouri, to-wit: The south half of the southeast fourth of section number seven (7), the southwest fourth of the southwest quarter of section number eight (8), the west half of the northwest fourth of section number seventeen (17), lot number one (1) of the northwest fourth of section number eighteen (18), all in township number sixty-six (66), of range number thirty-eight (38), and containing, according to the government survey, four hundred and forty (440) acres; to have and to hold the same, with the appurtenances, to the party of the second part and to his successor or successors in this trust, and to him and his grantees and assigns, forever. In trust, however, for the following purposes: Whereas, Mary Miller and William Miller, her husband, the said parties of the first part, have this day made, executed and delivered the said party of the third part their promissory notes, of even date herewith, by which they promise to pay the said Joseph M. Patterson, or order, for value received, five thousand one hundred and forty dollars.

$3,000. Stirling, Illinois, March 1st, 1871.

Sixty days after date we promise to pay to the order of Joseph M. Patterson, of Stirling, Illinois, three thousand dollars, at the banking house of Patterson & Co., value received, with interest at the rate of ten per cent per annum from date until paid, if not paid at maturity.

(Signed) MARY MILLER.
WILLIAM MILLER.

$2,140.00. Stirling, Illinois, March 1st, 1871.

Sixty days after date we promise to pay to the order of Joseph M. Patterson, of Stirling, two thousand one hundred dollars, at the banking house of Patterson & Co., value received, with interest at the rate of ten per cent per annum from date until paid, if not paid at maturity.

(Signed) MARY MILLER.
WILLIAM MILLER.

Now, therefore, if the said parties of the first part, or anyone for them, shall well and truly pay off and discharge the debt and interest expressed in the said notes, and every part thereof, when the same become due and payable, according to the true tenor, date and effect of said notes, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part; but should the said first parties fail or refuse to pay the said debt or the said interest, or any part thereof, when the same or any part thereof shall become due and payable according to the true tenor, date and effect of said notes, then the whole shall become due and payable and this deed shall remain in force, and the said party of the second part, or in case of his death, absence, refusal to act or disability in anywise, the then acting sheriff of Atchison county, Mo.. at the request of the legal holder of the said notes, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court house door in the town of Rock Port, Atchison county, Missouri, for cash, first giving twenty days' public notice of the time, terms and place of sale, and of the property to be sold, by advertisement in some newspaper printed and published in the town of Rock Port, county of Atchison, State of Missouri, and upon such sale shall execute and deliver a deed in fee simple of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of said sale: and any statement of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as *prima facie* evidence of such fact; and such trustee shall, out of the proceeds of said sale, pay—first, the cost and expenses of executing this trust, including legal compensation to the trustee for his services; and next, he shall apply the proceeds remaining over to the payment of said debt and interest, or so much thereof as remains unpaid, and the remainder, if any, shall be paid to the said parties of the first part, or their legal representatives. And the said party of the second part covenant faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

MARY MILLER. [SEAL.]
WILLIAM MILLER. [SEAL.]

Acknowledged March 2nd, 1871.

On the margin of said deed is the following:

I, the undersigned trustee, do hereby acknowledge full and complete satisfaction of the mortgage herein recorded, and release the real estate therein described unto the grantor, their heirs and assigns, forever.

Given under my hand this 20th day of October, 1877.

ARCHIBALD E. WYATT, Trustee.

Attest: JOHN W. SMITH, Recorder.

EXHIBIT H.

General Warranty Deed.

This indenture, made on the 23d day of February, A. D. one thousand eight hundred and seventy-two, by and between

Mary Miller and William Miller, her husband, of Atchison County, Missouri, parties of the first part, and Eli J. Seagar, M. H. Horn and V. W. Weaver, of the county of Lehigh, in the State of Pennsylvania, parties of the second part, witnesseth, that the said part of the first part in consideration of the sum of fifteen thousand five hundred dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and state of Missouri, to wit: All the south half of the southeast quarter of section number (7) seven; the southwest fourth of the southwest fourth of section number (8) eight; the west half of the northwest fourth of section number seventeen (17); the northeast fourth and lot No. one (1) on the northwest fourth of section number eighteen (18); all in township number sixty-six (66), of range number thirty-eight (38), west of the 5th P. M., and containing according to the government survey, four hundred and forty (440) acres, more or less. To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining unto the said parties of the second part, and unto their heirs and assigns, forever; the said parties of the first part hereby covenanting that they are lawfully seized of an indefeasible estate of fee in the premises herein conveyed; that they have a good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by them or those under whom they claim, and that they will warrant and defend the title to said premises unto the said parties of the second part, and unto their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever. In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

MARY MILLER. [SEAL.]
WILLIAM MILLER. [SEAL.]

Acknowledged February 23rd, 1872.
Recorded February 29th, 1872.

Exhibit I.

Know all men by these presents that James Wood and Jane E. Wood, his wife, of the county of Atchison, in the State of Missouri, have this day for and in consideration of the sum of six thousand dollars to the said Jane Wood, in hand paid by William Miller of the county of Atchison, in the state of Missouri, do by these presents remise, release and forever quit claim unto the said William Miller, and to his heirs and assigns the following described tract or parcels of land, situate in the counties of Atchison and Nodaway, in the State of Missouri, to wit: The northwest fourth of the southeast quarter of section No. (18) eighteen, of township No. (66) sixty-six, of range No. (38) thirty-eight; the southwest fourth of the southeast quarter of section No. (25) twenty-five, in township No. (66) sixty-six, of range No. (39) thirty-nine; the east half of the northeast quarter and the north half of the southeast quarter of section No. (25) twenty-five, of township No. (66) sixty-six, of range No. (39) thirty-nine; the northwest fourth of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine; the northwest fourth of the northwest quarter of section No. (25) twenty-five, of township No. (66) sixty-six, of range No. (39) thirty-nine; the southeast fourth of the southeast quarter of section No. (24) twenty-four, in township No. (66) sixty-six, of range No. (39) thirty-nine; the west half of the southeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six; the northeast fourth of the southeast quarter of section No. (24), of township No. (66) sixty-six, of range No. (39) thirty-nine, and the southeast quarter of the Southwest quarter of section No. (28) twenty-eight, of township No. (66) sixty-six, of range No. thirty-eight (38); the southeast quarter of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine, and the southwest fourth of the northwest quarter of section No. (19) nineteen, of township No. (66) sixty-six, of range No. (38) thirty-eight; the west half of the southwest quarter of section No. (18) and the northwest quarter of the northwest quarter of section No. (19) nineteen, in township No. (66) sixty-six, of range No. (38); and the northeast quarter of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. thirty-nine (39); the north half of the northeast quarter of section No. (15) *fifty*, in township No. (66) sixty-six, in range No. (39) thirty-*eight*; the southeast quarter of the southeast quarter of section No. (19) nineteen, in township No. (66) sixty-six, of range No. (38) thirty-eight; the southwest quarter of section No. (19), in township No. (66) sixty-six, of range No. (38) thirty-eight, and the northeast quarter of the southeast quarter and the west half of the southeast quarter of section No. (19) nineteen, in township No. (66) sixty-six, of range No. (38) thirty-eight. All west of the 5th principal meridian.

In witness whereof we have hereto subscribed our name and affixed our seals, this 24th day of March, A. D. 1879.

JAMES WOOD. [SEAL.]
Stamp $6.00. JANE E. WOOD. [SEAL.]
Acknowledged March 24th, 1870.
Recorded April 7th, 1870.

EXHIBIT J.

Trust Deed.

This deed made and entered into this 28th day of September, eighteen hundred and seventy-one, by and between William Miller, of the county of Atchison and State of Missouri, party of the first part ; Archibald E. Wyatt, of the county of Atchison, State of Missouri, party of the second part, and Eli J. Seager, of Allentown, of the county of Lehigh, State of Pa., party of the third part, witnesseth, that the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, the following described real estate, situate, lying and being in the county of Atchison, and State of Missouri, to wit : The east half and northwest fourth of the northeast quarter, and the southeast quarter of section No. (24) twenty-four ; the northwest fourth of the northwest quarter ; the east half of the northeast quarter, the north half and the southwest fourth of the southeast quarter of section No. (25) twenty-five, township No. (66) sixty-six, of range (39) thirty-nine, W. 5th P. M., and the west half of the southwest quarter and the northwest fourth of the southeast quarter of section eighteen ; the southwest quarter and the west half of the northwest quarter and the west half and northeast quarter, and the southeast fourth of section No. (19) nineteen, and the southeast quarter of the southwest quarter of section No. (28) twenty-eight, all of township (66) sixty-six, of range No. (38) thirty-eight, W. 5th P. M. To have and to hold the same, with the appurtenances, to the party of the second part and to his successor or successors in this trust, and to him and his grantees and assigns forever. In trust, however, for the following purposes : Whereas, William Miller, the said party of the first part has this day made, executed and delivered the said party of the third part his promissory note of even date herewith, by which he promised to pay the said Eli J. Seager or order, for value received, twentv-five thousand dollars ($25,000), as follows :

$25,000. Rockport, Mo., Sept 1st, 1871.

Ninety days after date I promise to pay to the order of Eli J. Seager the sum of twenty-five thousand ($25,000) dollars for value received, with interest from date at the rate of——per cent per annum. (Signed.) WILLIAM MILLER.

Now, therefore, if the said party of the first part, or anyone for him, shall well and truly pay off and discharge the debt and interest expressed in the said note and every part thereof when the same become due and payable according to the true tenor date and effect of said note, then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of the said party of the first part ; but should the said first party fail or refuse to pay the said debt or the said interest or any part thereof when the same or any part thereof shall become due and payable according to the true tenor, date and effect of said note, then the whole shall become due and payable, and this deed shall remain in force, and the said party of the second part, or in case of his absence, death, refusal to act, or disability in anywise the (then) acting sheriff of Atchison county, Missouri, at the request of the legal holder of the said note, may proceed to sell the property hereinbefore described or any part thereof at public vendue to the highest bidder, at the court house door in the town of Rock Port, at Atchison county, Missouri, for cash, first giving sixty days public notice of the time, terms and place of sale, and of the property to be sold, by advertisement in some newspaper printed and published in the town of Rock Port: and upon such sale shall execute and deliver a deed in fee simple of the property sold to the purchaser or purchasers thereof, and receive the proceeds of said sale, and any statement of facts or recital by the said trustee in relation to the non-payment of the money secured to be paid, the advertisement sale, receipt of the money and the execution of the deed to the purchaser shall be received as prima facie evidence of such fact; and such trustee shall out of the proceeds of such sale pay, first the cost and expenses of executing this trust, including legal compensation to the trustee for his services, and next, he shall apply the proceeds remaining over to the payment of said debt and interest, or so much thereof as remains unpaid, and the remainder, if any, shall be paid to the said party of the first part or his legal representatives. And the said party of the second part covenant faithfully to perform and fulfill the trust herein created, not being liable or responsible for any mischance occasioned by others.

In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

WILLIAM MILLER. [SEAL.]

The word hundred was erased and the word thousand inserted before signing.

M. McKILLOP, Notary Puplic.

Acknowledged September 28th, 1871.

Recorded September 28th, 1871, Book 6, page 51.

EXHIBIT K.

H. F. BEAN and JOHN W. ALSOP, under the firm name of Bean & Alsop,
against
WILLIAM MILLER, *Defendant.*

In the Circuit Court of Atchison County, Missouri.

To whom it may concern: You will take notice that I have this day levied a writ of attachment, issued in the above cause, upon the following-described real estate, in Atchison county, in the State of Missouri, to-wit: The northwest fourth of the southeast quarter and the north half of the southwest quarter of section No. eighteen (18), the south half of section No. nineteen (19), the west half of the northwest quarter of section No. nineteen (19), and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in towhship No. sixty-six (66), of range No. thirty-eight; the east half and northwest fourth of the northeast quarter and the southeast quarter of section No. twenty-four (24), the east half of the northeast quarter, the northwest fourth of the northwest quarter, the north half of the southeast quarter, and the southwest fourth of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), as the property of said William Miller, the above-named defendant; that the amount claimed in said suit for which said attachment was issued is sixteen thousand one hundred dollars.

Done at my office in Atchison county, Missouri, this 21st day of October, 1874.

HENRY WARNEKE,
Sheriff Atchison County, Missouri.

Filed for record October 21st, 1874.

JAMES M. TEMPLETON, Recorder.
Per John W. Smith, Dep.

EXHIBIT L.

STATE OF MISSOURI, }
County of Atchison. } ss.

Be it remembered, that in vacation of the circuit court of Atchison county, and of the 29th judicial circuit of the State of Missouri, the following petition was filed in the office of clerk of said court, on the 3d day of March, A. D. 1874:

HERMAN KOONTZ, *Plaintiff*,
against
WILLIAM MILLER and MARY MILLER, *Defendants*.

In the Circuit Court of Atchison County, Missouri, May Term, A. D. 1874.

Plaintiff states, for first cause of action, that defendant William Miller, by his promissory note herewith filed, dated July 11th, 1873, promised, for value received, to pay, twelve months after date of said note, to the order of the plaintiff, the sum of twelve hundred and fifty-seven and 69-100 dollars, for value received, with interest at the rate of twelve per cent per annum from date, and interest payable quarterly, until paid. That said note was executed in the State of Nebraska, and that in that State the legal rate of interest is twelve per cent per annum; that no part of said note has been paid except the sum of twenty-seven and 69-100 dollars, paid July 23d, 1873, and that the remainder of said note and all interest thereon are still due and unpaid, and for which plaintiff prays judgment.

For second cause of action plaintiff states that defendant William Miller, by his promissory note, herewith filed, dated July 11th, 1873, promised, twelve months after date of said note, to pay to the order of plaintiff, for value received, the sum of five hundred and fifty and 13-100 dollars, with interest from date at the rate of twelve per cent per annum from date, and interest payable quarterly, until paid; and that said last-named note was executed in the State of Nebraska, and that in said State the legal rate of interest is twelve per cent per annum till paid; that no part of said note has been paid except the sum of nine 33-100 dollars, paid July 22d, 1873, and that the remainder of said note and all interest due thereon are still due and unpaid, and for which plaintiffs pray judgment.

And plaintiff further states that on the day and year last aforesaid—to-wit, July 11th, 1873,—defendant, for the purpose of securing the payment of said note, executed and delivered to plaintiff a mortgage deed, herewith filed, conveying to plaintiff a tract of land, situate in said county of Atchison, known in said mortgage by the following description, to-wit: The northwest quarter of the southeast quarter and the west half of the southwest quarter of section eighteen; the south half of section nineteen, and the west half of the northwest quarter nineteen; the southeast quarter of the southwest quarter of section No. (28) twenty-eight, in township No. (66) sixty-six, of range No. (38) thirty-eight; also the east half of the northeast quarter and the northwest quarter of the northeast quarter of section No. (24) twenty-four, the southeast quarter of section No. (24) twenty-four, the east half of the northeast quarter, the northwest quarter of the northwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section No. (25) twenty-five, in township sixty-six, of range No. (39) west; said tract containing in all 1080 acres, more or less, on the following conditions, to-wit: That if the said William Miller shall well and truly pay, or cause to be paid, the said sum of money in said notes mentioned, with the interest thereon, according to the tenor and effect of said note, and shall keep and perform all the other covenants and agreements herein contained, on his part to be kept and performed, then these presents shall be null and void. But if said sums of money, or any part thereof, or any interest thereon, is not paid when the same is due, or if the taxes and assessments against said premises are not paid at or before the time the same by law become delinquent, or if said mortgagor shall fail to keep and perform any of the covenants herein contained, on his part to be kept and performed, then the whole of said sums and interest shall immediately become due and payable; and in case of a foreclosure of this mortgage a reasonable sum, to be determined by the court, shall be awarded in addition to the judgment, as an attorney's fee.

Plaintiff avers that defendant has failed to comply with and perform the conditions of said mortgage on his part, and that he has failed to pay said interest as specified in said notice, and that there is two quarters interest due on said notes and not paid, and that, by the conditions of said mortgage, a failure to pay said interest in the manner provided in said notes, causes the whole of said notes and all interest to become due. Wherefore, plaintiff prays judgment as follows: On the first count, for twelve hundred and fifty-seven 69-100 dollars and all interest, less thirty-seven and 69-100 dollars paid. On the second count, for five hundred and fifty and 13-100 dollars, with interest due thereon, less nine 13-100 dollars paid July 22d, 1873. And also for such a sum as the court may see fit, in its discretion, to grant, as attorney's fee, according to the provisions of said mortgage, and the equity of redemption of said defendants in and to said tract of land may be foreclosed, and that the same, or so much as may be necessary, be sold to pay off and discharge the judgment rendered, and for other and proper relief.

DURFEE, McKILLOP & CO.,
Attorneys for Pl'ff.

Mr. McKillop, attorney for plaintiff, makes oath and states that the said defendants are non-residents of this State, so that the ordinary process of law cannot be served on them.

M. McKILLOP.

Subscribed and sworn to before me, this 3d day of March, 1874. A. F. TIFFANY, Clerk.

Per John W. Smith, D. C.

COPY OF NOTES.

$1,257.69. Omaha, Nebraska, July 11th, 1873.

Twelve months after date I promise to pay to Herman Koontz, or order, twelve hundred and fifty-seven 69-100 dollars, for value received, negotiable without defalcation or discount at the First National Bank of Omaha, Nebraska, with interest at the rate of twelve per cent per annum from date, interest payable quarterly, until paid. WILLIAM MILLER.

No. 43,691.

$550.13. Omaha, Nebraska, July 11th, 1873.

Twelve months after date I promise to pay to Herman Koontz, or order, five hundred and fifty 13-100 dollars, for value received, negotiable without defalcation or discount at the First National Bank of Omaha, Nebraska, with interest at the rate of twelve per cent per annum from date, and interest payable quarterly, until paid. WILLIAM MILLER.

No. 16,701. Due July 14, '74.

COPY OF MORTGAGE.

Know all men by these presents, that we, William Miller and Mary Miller, husband and wife, in consideration of eighteen hundred and seven 82-100 dollars in hand paid, do hereby grant, bargain and sell and convey unto Herman Koontz, of Omaha, Nebraska, the following-described real estate, situate in the county of Atchison, and State of Missouri, to-wit: The northwest quarter of the southeast quarter and the west half of the southwest quarter of section eighteen, the south half of section nineteen, and the west half of the northwest quarter of section nineteen; the southeast quarter of the southwest quarter of section twenty-eight, in township sixty-six, range thirty-eight west; also the east half of the northeast quarter and the northwest quarter of the northeast quarter of section twenty-four (24), the southeast quarter of section twenty-four, and the east half of the northeast quarter, the northwest quarter of the northwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section twenty-five, in township sixty-six, range thirty-nine west, said tracts containing in all 1080 acres, more or less; also the following-described real estate, in the county of Nodaway, and State of Missouri, to-wit: The north half of the northeast quarter of section fifteen, in townshtp sixty-six (66), range thirty-eight west, containing eighty acres more or less, together with all the appurtenances thereunto belonging. And we do hereby covenant with the said Herman Koontz, his heirs and assigns, that we are lawfully seized of said premises, that they are free from incumbrances, and we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever. Provided always, and these presents are upon this condition, that, whereas, said William Miller has this day made, executed and delivered to said Herman Koontz two certain promissory notes, one for twelve hundred and fifty-seven 69-100 dollars, and the other for five hundred and fifty 13-100 dollars, both due in twelve months after date, with interest payable quarterly at the rate of twelve per centum per annum. Now, if the said William Miller shall well and truly pay, or cause to be paid, said sum of money in said notes mentioned, with the interest thereon, according to the tenor and effect of said notes, and shall duly keep and perform all the other covenants and agreements herein contained, on his part to keep and perform, then these presents shall be null and void. But if said sums of money, or any part thereof, or any interest thereon, is not paid when the same is due, or if the taxes or assessments against said premises are not paid at or before the time the same by law becomes delinquent, of the said mortgagor shall fail to keep any of the covenants herein contained, on his part to be kept and performed, then the whole of said sums and interest shall immediately become due and payable; and in case of the foreclosure of this mortgage a reasonable sum, to be determined by the court, shall be awarded, in addition to the judgment, as an attorney's fee.

Signed this eleventh day of July, A. D. one thousand eight hundred and seventy-three.

WILLIAM MILLER.
MARY MILLER.

By WILLIAM MILLER in presence of BYRON REED.

Acknowledged July 11th, 1873, by William Miller, and by Mary Miller July 15th, 1873.

ORDER OF PUBLICATION.

HERMAN KOONTZ, *Plaintiff*,
against
WILLIAM MILLER and MARY MILLER, *Defendants*.

In the Circuit Court of Atchison County, Missouri, May Term, 1874.

Now at this day comes Malcolm McKillop, one of the attorneys for plaintiffs herein, before the undersigned, clerk of the circuit court of Atchison county, in vacation, and files his petition and affidavit, stating, among other things, that the above named defendants, William Miller and Mary Miller, are non-residents of this State. It is therefore ordered aforesaid, in vacation, that publication be made notifying them that an action has been commenced against them by petition, the object and general nature of which is to procure a judgment of foreclosure of a certain mortgage, given by William Miller and Mary Miller, to secure the payment of two certain notes for seventeen hundred and sixty dollars and eighty cents (*$1,700*.80), dated July 11th, 1873, due twelve months after date, and payable to the order of said Herman Koontz, which said mortgage was laid on the following described real estate, lying, being and situate in Atchison county, in the State of Missouri, to-wit:

The northwest quarter of the southeast quarter, and the west half of the southwest quarter of section No. eighteen (18); the south half of section No. nineteen (19), and the west half of the northwest quarter of section No. nineteen (19); the southeast quarter of the southwest fourth of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38) west; also the east half of the northeast quarter, and the northwest fourth of the northeast quarter of section No. twenty-four (24); the southeast quarter No. twenty-four (24); and the east half of the northeast quarter of the northwest quarter of the northwest quarter; the north half of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine west; said tracts containing in all one thousand and eighty

(1080) acres more or less, and that unless they be and appear at the next term of said court, to be holden at the court house in the town of Rock Port, within the county of Atchison, on the 4th day of May, 1874, and on or before the third day thereof, if the term shall so long continue, and if not, then before the end of the term, judgment will rendered against them and their property sold to satisfy the same.

It is further ordered that a copy hereof be published in the Atchison County Journal, a newspaper published in said county of Atchison, for four weeks successively, the last insertion to be at least four weeks before the commencement of the next term of said court.

STATE OF MISSOURI, } ss.
County of Atchison. }

I, the undersigned, clerk of the circuit court in and for said county, hereby certify that the above and foregoing is a full and correct copy of the order of publication made in the cause therein named, as fully as the same now remains of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said court, this 5th day of March, A. D. 1874.

Attest: A. F. TIFFANY, Clerk.
Per J. W. Smith, D. C.

STATE OF MISSOURI, } ss.
County of Atchison. }

Be it remembered that at a regular term of the circuit court of the 29th jndicial circuit, in and for Atchison county, Missouri, begun and held at the court house, in the town of Rock Port, on the 5th day of May, A. D. 1874, present Hon. Henry S. Kelley, judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff, and James M. Templeton, clerk; and on the 3d day of said term, to-wit: on the 7th day of May, 1874, among other proceedings, the following were had and done, to-wit:

HERMAN KOONTZ
against
WILLIAM MILLER and MARY MILLER.

Now comes the plaintiff, by his attorney, and files the affidavit of A. B. McCreary, one of the editors of the Atchison County Journal, a newspaper published in Atchison county, Missouri, whereby it appears to the court that said defendant has been duly notified of the pendency of this by four insertions in said paper of the order of publication made in this cause for four weeks successively, the last insertion being at least four weeks before the commencement of the present term of this court.

And again, at the same term of said court, to-wit: on the 9th day of May, 1874, it being the 5th day of said term, the following was had and done in said cause:

Herman Koontz
against
William Miller and Mary Miller.

Now here, at this day, this cause coming up, here comes the plaintiff, by his attorney, and the said defendants having wholly failed and refused to make his appearance at the present term of this court, it is considered by the court that the plaintiff have and recover of and against the said defendants his demand in the premises, and that unless said defendants be and appear at the next term of this court and show cause to the contrary, a final judgment will be rendered against them, to which term this cause is continued.

And at the regular September term of said court, begun and held at the court house in the town of Rock Port, on the 22d day of September, 1874,—present, Hon. Henry S. Kelly, judge; John D. Campbell, pros. attorney; Henry Warneke, sheriff; and James M. Templeton, clerk,—and on the 3d day of said term—to-wit, on the 24th day of September, 1874,—the following further proceedings were had and done, to-wit:

Herman Koontz, *Plaintiff*,
against
William Miller and Mary
Miller, *Defendants.*

In the Circuit Court of Atchison County, Mo.

And now, on this 24th day September, A. D. 1874, comes the plaintiff, by his attorney, and it appearing to this court that at the last term of this court defendants, having been duly served with process, came not, though called, but made default, and thereupon all and singular the matters and things being submitted to the court, and by the court seen and heard, the court doth find that the said defendant William Miller is indebted to the plaintiff herein, on account of the debt in said deed of mortgage described, as follows: On the first note in said mortgage and petition described, in the sum of fourteen hundred and thirty-two and 10-100 dollars, and that said note was executed in the State of Nebraska, and that the legal rate of interest in said State is twelve per cent per annum. On the second note, in said mortgage and petition described, in the sum of six hundred and twenty-nine and 8-100 dollars, and that said note was executed in the State of Nebraska, and that in said State the legal rate of interest is twelve per cent per annum. And the court also finds that in said deed of mortgage said defendants agreed that, should the same be foreclosed, a reasonable attorney's fee should be allowed by the court against said defendant. It is, therefore, by the court, considered, adjudged and decreed that Durfee, McKillop & Co. be allowed a fee of one hundred dollars, to be collected as other costs, and that the equity of redemption in said premises be foreclosed, and that the plaintiff recover of William Miller the aggregate of the sum of above named due on said note, to-wit: the sum of two thousand and seventy-one 20-100 dollars, the same being the debt aforesaid found to be due, together with his costs and attorney's fee above named, to be levied of the real estate in said deed of mortgage described as follows:

N. W. 1-4 S. E. 1-4, the W. 1-2 S. W. 1-4	18,	66,	38.
S. 1-2	19,	66.	38.
W. 1-2, S. W. 1-4	"	"	"
S. E. 1-4, S. W. 1-4	28	"	"
E. 1-2, N. E. 1-4	24,	66,	39.
N. W. 1-4, N. E. 1-4	"	"	"
S. E. 1-4	"	"	"
E. 1-2, N. E. 1-4	25,	"	"
N. W. 1-4, N. W. 1-4	"	"	"
N. 1-2, S. E. 1-4	"	"	"
S. W. 1-4, S. E. 1-4	"	"	"

And on the 10th day of November, 1874, in vacation, the following execution was issued:

The State of Missouri to the Sheriff of the County of Atchison:

Whereas, Herman Koontz, on the the 24th day of September, in the year of our Lord 1874, at our court, hath recovered, against William Miller and Mary Miller, the sum of two thousand and seventy-one and 20-100 dollers ($2,071.20), the same to bear interest from the day aforesaid at the rate of twelve per cent per annum, and also for the sum of one hundred and twenty-nine and 30-100 dollars ($129.30), which to the said Herman Koontz was adjudged as his costs in that suit expended. These are, therefore, to command you that of the following-described real estate, to-wit: the northwest fourth of the southeast quarter, the west half of the southwest quarter of section No. (18) eighteen, and the south half of section No. (19) nineteen, the west half of the northwest quarter of section (19) nineteen, the southeast fourth of the southwest quarter of section No. (28) twenty-eight, in township No. (66) sixty-six, of range No. (38) thirty-eight, and the east half of the northeast quarter, the northwest fourth of the northeast quarter and the southeast quarter of section No. (24) twenty-four, the east half of the northeast quarter, the northwest fourth of the northwest quarter, the north half of the southeast quarter, and the southwest fourth of the southeast quarter of section No. (25) twenty-five, in township No. (66) sixty-six, of range No. (39) thirty-nine, of the said William Miller and Mary Miller, you cause to be made the debt, damages and costs, and that you have the same before the judge of said court on the 18th day of January, 1875, to satisfy the debt, damages and costs aforesaid, and that you certify how you execute this writ.

Witness James M. Templeton, clerk of the said court, at Rock Port, this 10th day of November, in the year A. D. 1874.

[SEAL.] James M. Templeton, Clerk.

Per J. W. Smith, D. C.

With the following endorsements thereon:

I executed the within writ this 12th day of November, 1875, by levying upon all the right, title and claim that defendant William Miller has in and to the following-described real estate, to-wit: The northwest fourth of the southeast quarter, the west half of the southwest quarter, of section number eighteen (18), and the south half of section number nineteen (19), the west half of the northwest quarter of section number nineteen (19), the southeast fourth of the southwest quarter of section number twenty-eight (28), in township number sixty-six (66), of range number thirty-eight, and the east half of the northeast quarter, the northwest quarter of the northeast quarter, and the southeast quarter, of section number twenty-four (24), the east half of the northeast quarter, the northwest fourth of the northwest quarter, the north half of the southeast quarter, and the southwest fourth of the southeast quarter, of section number twenty-five (25), in township number sixty-six (66), of range number thirty-nine (39), or so much as will satisfy the within demand and costs. All done in Atchison county, Missouri.

HENRY WARNEKE, Sheriff.

Demand	$2,071.20
J. M. Templeton, cl'k, fee	7.10
H. Warneke, sheriff, fee	.20
Printer's fee	23.00
Durfee, McKillop & Co., att'y fee	100.00
Sale notice	12.50
	$2,214.50

Held up by order of plaintiff att'y, costs paid except commission of sheff. HENRY WARNEKE, Sheriff.

This execution came to hand Nov. 12th, 1874.

HENRY WARNEKE, Sh'ff.

Attached by paste to the record of the judgment hereinbefore described is a separate piece of paper written in words and figures following, towit:

Herman Koontz, *Plaintiff*,
against
William Miller and Mary
Miller, *Defendants*.

In the Circuit Court of Atchison County, Missouri.

I, the said Herman Koontz, do hereby assign and set over to Joseph M. Patterson, of Stirling, Illinois, all the right, title and interest I have in and to a certain judgment and decree rendered in the said circuit court of Atchison county, Missouri, at the September term, 1874, on the 24th day thereof, for the sum of two thousand and seventy-one and 20-100 dollars, at twelve per cent interest, and all costs accrued thereon in favor of the said Herman Koontz and against the said William Miller and Mary Miller, without recourse on me.

Witness my hand and seal this 30th day of January, 1875.

H. KOONTZ. [SEAL.]

Also a further piece of paper in words and figures as follows, to-wit:

S. E. 24, 66, 39.

Copy.

HERMAN KOONTZ,
Assigned to use of Jos. M. Patterson,
vs.
WILLIAM MILLER and MARY MILLER,
Defendants.

In the Circuit Court of Atchison County, Missouri.

I, the said Joseph M. Patterson, of Stirling, Whiteside county, Illinois, do hereby assign and set over to Eli J. Seager, of Allentown, Lehigh county, Pennsylvania, all the right, title and interest I have in and to a certain judgment and decree rendered in said circuit court of Atchison county, Missouri, at her September term, 1874, on the 21st day thereof, for the sum of two thousand and seventy-one 20-100 dollars, at twelve per cent interest, and all costs accrued thereon, in favor of the said Jos. M. Patterson, as assignee of said Herman Koontz, and against said William and Mary Miller, without recourse to me.

Witness my hand and seal this 30th day of December, 1875.

JOSEPH M. PATTERSON.

Witnesses present:
WM. L. PATTERSON.
R. CHAPMAN.

Neither of which are in the handwriting of the clerk, nor attested by him.

EXHIBIT M.

In vacation of the circuit court of Atchison county, and of the 29th judicial circuit, in the State of Missouri, the following petition was filed in the office of the clerk of said court, on the 14th day of April, 1871, to-wit:

STATE BANK OF NEBRASKA, *Plaintiffs*,
against
WILLIAM MILLER and MARY MILLER,
Defendants.

In the Circuit Court of Atchison County, Missouri, May Term, A. D. 1871.

The plaintiff in the above entitled cause states that it is a corporation duly incorporated under and by virtue of the laws of the State of Nebraska.

That the defendant William Miller, by his promissory note, herewith filed, dated Rock Port, Missouri, the 24th day of March, A. D. 1870, promised to pay, on or before the 1st day of April, A. D. 1871, to James Wood or order, for value received, thirty-three hundred and eighty-one dollars, with interest at the rate of ten per cent per annum from date, at the First National Bank of Omaha, in the State of Nebraska, and delivered the same to said James Wood, who, on or about the 13th day of March, A. D. 1871, for a valuable consideration, assigned by endorsement in writing on said note, and delivered the same to the plaintiffs herein.

That said promissory note, when the same became due and payable, was duly presented for payment at the said First National Bank of Omaha, in the State of Nebraska, and payment thereof was demanded, which was refused, the said William Miller having no funds to his credit at said bank, and said note was thereupon duly protested for non-payment.

That the place of the execution and delivery of said note was Rock Port, in the State of Missouri, and the place where it was made payable, the First National Bank of Omaha, in the State of Nebraska, as aforesaid.

That the amount of damages which the plaintiff has sustained by reason of the non-payment and protest of said note, is ten per cent of the principal sum mentioned in said note, as allowed by statute in such cases made and provided.

The plaintiff further states that on said 24th day of March, A. D. 1870, the defendant William Miller and Mary Miller, for the purpose of securing the payment of said note, executed and delivered to said James Wood, a mortgage deed, which is herewith filed, conveying to said James Wood the following described real estate, situated in said Atchison county, to wit: The southeast quarter of section No. 24 twenty-four, in township No. sixty-six (66), of range No. thirty-nine (39) west 5th P. M. Upon the following conditions, to-wit: if the said William Miller, his executors or administrators, shall pay the sum of money specified in said note, and the interest that might become due thereon, according to the tenor and effect of said note, then said conveyance was to become void, otherwise to remain in full force and virtue in law.

That at the time said James Wood endorsed and delivered said note to the plaintiffs, he the said James Wood assigned by endorsement in writing and delivered to plaintiff the mortgage herein above mentioned, securing the payment of said note. The plaintiff avers that the defendant William Miller has wholly failed to perform the condition on his part in said mortgage, and that the said sum of thirty-three hundred and eighty-one dollars, and all interest due thereon, also all of said damages hereinbefore mentioned, and the cost of protest, remains unpaid.

Wherefore, plaintiff prays that judgment may be rendered for said sum of thirty-three and eighty-one dollars, with ten per cent interest from March 24th, A. D. 1870, for debt; also for ten per cent of the principal sum mentioned in said note (*$33,810*), damages for non-payment and protest of said note, as allowed by statute in such cases made and provided, together with all costs, and that the equity of redemption of said defendants in and to said tract of land may be foreclosed, and that the same, or so much thereof as may be necessary, be sold to pay off and discharge the judgment rendered, and for other proper relief.

JOHN P. LEWIS, & CO.,
Attorneys for plaintiff.

Filed April 14th, 1871.

A. F. TIFFANY, Clerk.

Copy of Writ.

The State of Missouri to the Sheriff of Atchison County, Greeting:

These commands you that you summon William Miller, that he be and appear before the Honorable Judge of our Atchison Circuit court, on the first day of the next May term thereof, to be begun and held at the court house in the town of Rock Port, in said county, on the first day of May, A. D. 1871, to answer the foregoing petition of the State Bank of Nebraska; and certify then and there how you execute this writ.

Witness my hand and official seal, at office in Rock Port, this 14th day of April, A. D. 1871.

AUSTIN F. TIFFANY, Clerk.

Endorsed as follows:

I served the within in Atchison county, Missouri, this 15th day of April, A. D. 1871, by delivering a true copy of the within writ and petition for defendant William Miller, at his usual place of abode, with a white member of his family over the age of 15 years.

D. A. COLVIN,
Sheriff Atchison county, Missouri.

COPY OF NOTE.

$3,381. Rock Port, Mo., March 24, 1870.

On or before April 1st, 1871, for value received, I promise to pay to the order of James Wood the sum of three thousand three hundred and eighty-one dollars ($3,381) at the First National Bank of Omaha, with interest at the rate of ten per cent per annum from date till paid.

WILLIAM MILLER.

947. 1-4 April, '71:

Pay State Bank of Nebraska or order, Omaha, March 13th, 1871. JAMES WOOD.

COPY OF PROTEST.

UNITED STATES OF AMERICA, }
State of Nebraska. } ss.

On the fourth day of April, in the year of our Lord one thousand eight hundred and seventy-one, at the request of the cashier of the State Bank of Nebraska, I, Rollin C. Smith, a notary public, duly admitted and sworn, dwelling in the city of Omaha, Neb., did present the original note (hereto annexed) to cashier of the First National Bank, Omaha, who said there was no funds, and demanded payment, who refused to pay the same. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker and endorser of the said note as against all others whom it doth or may concern, for exchange, re-exchange, and all costs and interest already incurred and to be hereafter incurred for want of payment of the same.

Witness my hand and official seal.

[SEAL.] ROLLIN C. SMITH, Notary Public.

COPY OF MORTGAGE.

Know all men by these presents, that William Miller and Mary Miller, his wife, of the county of Atchison, in the State of Missouri, have this day, for and in consideration of the sum of thirty-three and eighty-one (3381) dollars to the said William Miller in hand paid by James Wood, of the county of Atchison, in the State of Missouri, granted, bargained and sold, and, by these presents, do grant, bargain and sell, unto the said James Wood, the following-described tract or parcels of land, situated in the county of Atchison, in the State of Missouri, that is to say: The southeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine, w. 5th P. M. To have and to hold the premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said James Wood, his heirs and assigns, forever; upon this express condition: Whereas, the said William Miller, on the 24th day of March, 1870, made, executed and delivered unto the said James Wood his certain promissory note, in words and figures following, to-wit: [Here follows said note, heretofore copied.] Now, if the said William Miller, his executors or administrators, shall pay the sum of money specified in said note, and all the interest that may be due thereon, according to the true tenor and effect of said note, then this conveyance shall be void; otherwise, it shall remain in full force and virtue in law.

In witness whereof we have hereto subscribed our names and affixed our seals, this 24th day of March, 1870.

WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Acknowledged by William Miller March 24th, 1870.
Acknowledged by Mary Miller May 2d, 1870.
Recorded May 9th, 1870.

STATE OF MISSOURI, }
County of Atchison. } ss.

Be it remembered, that at a regular term of the circuit court of the 12th judicial district, for the county of Atchison, in the State of Missouri, begun and held at the court house in said county on the 18th day of September, 1871, the following proceedings were had and done in said court, to-wit: Present—Hon. Bennett Pike, judge; B. K. Davis, circuit attorney; Don A. Colvin, sheriff, and A. F. Tiffany, clerk,—and on the second day of said term—to-wit, on the 19th day of September, 1871,—the following proceedings were had and done, to-wit:

STATE BANK OF NEBRASKA
against
WILLIAM MILLER and MARY MILLER.

On application, it is ordered that defendants have leave to withdraw answer heretofore filed, and files his demurrer in lieu thereof.

And at the same term of said court—to-wit, on the 20th day of September, 1871,—the following further proceedings in said cause were had, to-wit:

STATE BANK OF NEBRASKA
against
WILLIAM MILLER and MARY MILLER.

And now defendant's demurrer to plaintiff's petition herein, coming up to be heard, the same is by the court overruled, and defendant excepts thereto, and has leave to file amended answer 60 days before next term, and to furnish plaintiff's attorneys with copy of same, and continued, defendant paying all costs now accrued.

Also, at the same term of said court, on the 22d day of September, 1871, it being the 5th day of said term, the following further proeedings were had:

State Bank of Nebraska
against
William Miller and Mary Miller.

On application of plaintiff, it is ordered by the court that she have leave to plead to defendant's answer herein 30 days before the next term of this court.

And again, in vacation of said court, and on the 28th day of November, 1871, the following answer to plaintiff's petition was filed.

In the Atchison Circuit Court, January Term, 1872.

State Bank of Nebraska
vs.
William Miller and Mary Miller.

Now here come the defendants, and for answer to plaintiff's petition herein, say that they deny that the plaintiff, the State Bank Nebraska, is corporation, or that it is incorporated under or by virtue of the laws of the State of Nebraska, or any other law whatever.

The defendant William Miller admits that he executed the note sued upon by plaintiff.

Defendant denies that the said James Wood, at the time stated in plaintiff's petition, or at any other time, assigned said note to plaintiff herein for a valuable consideration, or for any consideration whatever.

Defendant denies that at the maturity of said note, the same was presented for payment at the First National Bank of Omaha, in the State of Nebraska, or at any other bank or place, or that payment thereof was ever demanded, or that the payment of said note was refused; and deny that said note was ever protested for non-payment, as stated in said plaintiff's petition.

These defendants deny that plaintiff, by virtue of any statute or otherwise, are entitled to, or that they have been damaged by reason of the non-payment and protest of said note, to ten per cent of the principal sum mentioned in said note, or three hundred and thirty-eight (338.10) dollars and ten cents, or any other amount.

Defendants admit the execution of the mortgage declared upon by plaintiff, but these defendants deny that said mortgage was ever assigned to plaintiff for any consideration whatever, or that the consideration of said mortgage has ever been forfeited by defendants in any particular whatever.

Defendants deny that this plaintiff is entitled to recover, or that there is now due it the sum of thirty-three hundred and eighty-one dollars, or any other amount, as its debt, or that there is now due, or that the plaintiff has any right to recover said interest or damages claimed by plaintiff in its said petition, or any part thereof, or any amount whatever.

Defendants deny that plaintiff is entitled to have said mortgage foreclosed, or the land therein described, sold, or any part thereof, as claimed by plaintiff in its said petition.

Defendants, for further answer and defense to the said petition of the said plaintiff, state the facts to be that, prior to the execution of the note and mortgage set out and declared upon by plaintiff, the said defendants William Miller and the said James Wood were partners in the speculation of certain lands, and particularly a certain farm situated in the county of Atchison, and State of Missouri, worth about eight thousand dollars; that it was agreed by and between said Miller and said Wood that each was to furnish a capital of six thousand dollars, and that said Wood, upon his part, was to take exclusive charge of the business of said partnership, as the defendant William Miller would be absent a greater portion the time; that, agreeable to their said contract, the said William Miller, one of the defendants, furnished the said Wood, at the commencement of their said operations as partners as aforesaid, the sum of six thousand dollars, to be by said Wood invested in real estate as aforesaid. Defendant further states that directly after said amount was paid to said Wood by the said William Miller as aforesaid, he, Miller, left the State of Missouri and became engaged in the construction of the Pacific railroad in the State of Nebraska and territories west thereof; that after the said defendant William Miller became so engaged and left the said Wood to carry on their said business in the State of Missouri as aforesaid, the said Wood falsely and fraudulently represented to this defendant William Miller, by written communications, or otherwise, that he had used all the money so advanced by said Miller, together with an equal amount of his own, in the purchase of lands in said Atchison county, and State of Missouri, and had purchased farms in addition thereto to the amount of about twelve thousand dollars, and requested him, the said Miller, to furnish him, the said Wood, the further sum of eight thousand dollars to be used for the united benefit of said Miller and Wood as aforesaid. That the full amount of land represented by said Wood to have been bought by him, Wood, for the united benefit of said Miller and Wood, was twenty-two hundred acres; that upon the representation of the said Wood, the said Miller, without any actual knowledge of the facts in the premises, but placing implicit confidence in the honesty of said Wood, advanced an additional eight thousand dollars to the said Wood to be used as aforesaid.

Defendants further state that said Wood, in furtherance of his nefarious and fraudulent acts, the defendant William Miller, depending wholly and relying upon the representation of the said Wood, he, William Miller, still being absent as aforesaid, came to the defendant in the State of Nebraska, and other places, and different times, and on different occasions, and falsely and fraudulently represented to said Miller that he had used an equal amount of money as that advanced by him (Miller) for their mutual benefit in the purchase of lands as aforesaid, and that he had purchased twenty-two hundred acres of the best land in the said county of Atchison, and State of Missouri; that the same was worth in the aggregate of thirty-five thousand dollars; that the said Wood then and there represented that the accounts and books thereof of the said partnership of the said Wood and Miller were all correct, and that he (Wood) had furnished one-half of all the money to buy and one-half of all moneys paid out for expenses, and otherwise used and expended in and about the premises. That he (Wood) was anxious to sell his interest in and to said land to the said defendant Miller; that the said William Miller, relying wholly upon the word and representation of the said Wood, having then no actual knowledge of the business, purchased said Wood's interest in and to said lands, and paid him the agreed price thereof for, at the time of said purchase, all but the sum of thirty-three hundred and eighty-one dollars, for which the said note and mortgage declared upon by plaintiff was given, and is the only consideration thereof.

These defendants further state that the said representation of the said Wood to the defendant William Miller was false, and that the said Wood did not invest the money so advanced by said William Miller in full, in real estate, as represented by him (Wood) to Wm. Miller at the time of the execution of said note and mortgage, but invested about three thousand dollars thereof in cattle, for his own use and benefit, and never accounted to this defendant William Miller therefor nor any part thereof, nor did the said Wood invest an amount equal to the amount of money furnished by said Miller, but, upon the contrary, only invested in real estate about the sum of fifteen hundred dollars; that was paid; said Wood did not purchase twenty-two hundred acres of land, as represented by him to the said Miller, but only purchased about one thousand acres, and that being purchased with the money of the defendant so advanced by him to said Wood, except the fifteen hundred dollars aforesaid; that said Wood purchased land of the trustees of Amity College, of the State of Iowa, and charged this defendant with the expenses, etc., for buying the same, and took a deed thereto in his own name; that the amount so charged was six hundred dollars; that said Wood has failed to give this defendant credit for about twelve hundred dollars that he is entitled to; that he (Wood) has given himself credit for about five hundred dollars for money paid out for him when the same was paid out of the assets of the firm; that said Wood has operated with other parties as a partner in different business, and used the money of said Miller, and has never accounted to said Miller therefor; that he charged all the amounts for work done by hands on the farm to the firm, but did not give the firm any credit for house rent, provisions, wood, for fuel, for preparing the same, nor for the expenses in hauling the same, house, etc., etc., and that said Wood, at the suit of Meckens *vs.* Wood and Miller, confessed judgment for the amount of one hundred and fifty dollars which he (the said Miller) had paid, and which was well known to Wood at the time, but, notwithstanding his knowledge that the debt was paid, confessed said judgment for the purpose of cheating and defrauding said Miller out of that amount, which amount was again paid out of the property of said William Miller without his knowledge or consent; and that said Wood charged the said Miller with five hundred dollars interest for money advanced by him (Wood) to the firm of Wood & Miller, which money was never advanced them or said firm, nor was either party to charge interest of the other, should the amounts advanced be equal.

Defendants further states that all of the fraudulent acts and representations of the said Wood was wholly unknown to the said William Miller until after the purchase of the interest of Wood in and to said land, as aforesaid, and the execution of the notes and mortgage aforesaid by the defendants to said Wood being the balance and therefor; that immediately after the said Miller had discovered that said fraud had been practiced upon him by said Wood he made all efforts in his power to gain possession of said note and mortgage, which he was unable to do.

These defendants further state that said note and mortgage was never assigned to the pretended State Bank of Nebraska; the plaintiff herein, for any consideration whatever; but if assigned at all, it was only assigned to it (plaintiff) for the purpose of enabling said Wood more effectually to perpetrate his said fraud upon said Miller, to collect said note. That the said plaintiff had full knowledge, at the time of the pretended assignment of said note, of the fraud practiced upon the said William Miller, and of his defence thereto, and of the failure of the consideration of said note. Defendant, for further answer to the said petition of said plaintiff, further states that said note was never prasented to him nor elsewhere for payment, nor was the same protested for non-payment, nor was he ever notified of any presentation nor demand of payment at the First National Bank of Omaha, in the said State of Nebraska, or that *that* said note had been protested for non-payment, as required by law; nor can plainttff collect damages for the non-payment of the note, nor any protestation thereof, had the same been protested, as it (the said plaintiff) commenced its said suit within twenty days after the same became due, and is therefore barred from recovering any per cent or damages for the non-payment and protesting said note.

Defendants further state that the said defendant Mary Miller is the wife of the said William Miller, is in nowise connected with the premises except as one of the mortgagors, which mortgage she signed jointly with her husband, and is, therefore, an improper party to plaintiff's action.

Wherefore, defendants say that the said James Wood owed the said William Miller, at the commencement of this suit, ten thousand dollars; having fully answered plaintiff's petition herein, asks to be dismissed with his costs in this behalf expended.

T. H. PARRISH,
Att'y for Def'ts.

Again on the 18th day of December, 1871, in vacation of the Atchison circuit court, the following replication was filed in the clerk's office of said court, in the above cause, to-wit:

In the Atchison Circuit Court.

STATE BANK OF NEBRASKA, *Plaintiffs*,
against
WILLIAM MILLER and MARY MILLER,
Defendants.

Plaintiff, for replication to the new matter set up in the amended answer of defendants, admits that prior to the execution of the note and mortgage in suit the defendant William Miller and James Wood were partners in the buying, for the purpose of speculation and farming, certain lands, as well as a large lot of cattle, horses, mules and farming utensils, said farm and also said property being in Atchison county, in the State of Missouri; but plaintiff denies that said farm was worth more than six thousand dollars. Admits that each party was to furnish six thousand dollars, and said Wood was take charge of said farm and said partnership property, and exclusively control the same in the absence of said Miller. But plaintiff denies that, agreeably to any contract or otherwise, said Miller furnished said Wood with six thousand dollars, or any other sum, to be by said Wood invested in real estate for the purpose of said partnership. Admits that said Miller furnished six thousand dollars to be invested in land, horses, mules, cattle, farming utensils and other general purposes of said partnership. Plaintiff admits that for part of the time said Miller was absent from the State of Missouri, engaged in the construction of the Pacific railroad, but charges that he frequently saw said Wood and was back to see how said partnership affairs was progressing very often.

But plaintiff denies that after said Miller became so engaged on said road, or at any time thereafter or prior thereto, the said Wood either falsely or fraudulently represented to said Wm. Miller, by written communication or otherwise, that he had used all the money so advanced by said Miller, together with an equal amount of his own money, in the purchase of land in Atchison county, State of Missouri, and had purchased land in addition thereto to the amount of twelve thousand dollars, or any other sum, and requested him, said Miller, to furnish said Wood the further sum of eight thousand dollars, or any other sum, to be used for the mutual benefit of said Miller and Wood.

Plaintiff denies that the amount of land represented by said Wood to have been bought by him for the mutual benefit of said Wood and Miller was twenty-two hundred acres, or any amount greater than will be shown in this replication hereafter. Denies that upon the representations of said Wood, the said Miller, without any actual knowledge of the fact in the premises, or placing confidence in the honesty and integrity of said Wood, ever advanced an additional eight thousand dollars to the said Wood to be used in the purchase of land as aforesaid.

Plaintiff denies that said Wood, in furtherance of any nefarious or fraudulent act or acts, or that said Miller, depending or relying upon the representations of said Wood, he, Miller, being absent, ever came to defendant William Miller, in the State of Nebraska, or elsewhere, at different times or occasions, and either falsely or fraudulently represented to said Miller that he, Wood, had used an equal amount of money as that advanced by Miller for their mutual benefit in the purchase of land, or that he had purchased twenty-two hundred acres of the best land in Atchison county, in the State of Missouri, or that the land was worth in the aggregate thirty-five thousand dollars, or that said Wood ever falsely or fraudulently represented that the accounts and books thereof of the said partnership of Wood and Miller were all correct, and that he, Wood, had furnished one-half of all the money to buy land, and one-half of all money laid out for expenses and otherwise used and expended in and about the premises, or that he, Wood, was anxious to sell his interest in and to said land to defendant Miller. Denies that said William Miller, relying wholly or at all upon the word and representation of said Wood, or having then no actual knowledge of the premises, purchased said Wood's interest in and to said lands and paid him the agreed price thereof at the time of said purchase, all but the sum of thirty-three hundred and eighty-one dollars. Admits that said note and mortgage was given as part consideration for said land, and other things, but denies that such was the only consideration thereof.

Plaintiff denies that any representation of said Wood to said Miller, about or concerning the premises, was or were false, or that said Wood did not invest all the money advanced by Miller to him, to be put in land, in full in real estate; charges that he invested all of said money as represented to said Miller at the time of the execution of said note and mortgage.

Denies that said Wood ever invested three thousand dollars, or one cent, of Miller's money in cattle for the use and benefit of himself; said Wood charges that said Wood accounted to William Miller for every cent ever received of him; charges that said Wood invested an amount equal to the amount of money furnished by said Miller. Charges that said Wood invested of his own money in real estate an amount much larger than fifteen hundred dollars; admits that he did not purchase twenty-two hundred acres of land, and denies that he ever so represented; admits that he represented to said Miller that he had purchased one thousand acres of land and has bargained partially for enough more to have made up said twenty-two hundred acres, but charges that said Miller never furnished his part of the money to pay for the same, and so the said Wood failed to get the said land. Charges that said one thousand acres of land was purchased with the money of said Wood and Miller, and not with Miller's money alone, except the said fifteen hundred dollars.

Plaintiff denies that said Wood ever purchased land of the trustees of Amity College, of the State of Iowa, and charges defendant Miller with the expenses for buying the same, and took the deed in his own name, or that the amount so charged was six hundred dollars, or any other sum. Denies that said Wood has failed to give defendant William Miller credit for twelve hundred dollars, or any other amount, that he, Miller, is or was entitled to, or that said Hood has given himself credit for five hundred dollars, or any other sum, for money paid out for him, nor the same was paid out of the assets of the firm, or that said Wood has operated with other parties as a partner in different business, and used the money of the said Miller, never accounting to him therefor, or ever so used said money. Admits that he, Wood, charged all the amount for work by hands on the farm to the firm, and charges that said Wood gave the firm credit for house rent, wood for fuel, and for preparing the same, and expenses for hauling the same home, just in accordance with the terms of contract between said Wood and Miller. Denies that said Wood, at the suit of Micken vs. Wood and Miller, confessed judgment for $150, which said Miller had paid, and which was known to said Wood at the time; denies that said Wood confessed any such judgment for the purpose of cheating or defrauding said Miller out of any amount, or that said amount was ever again paid out of the property of said Miller without his knowledge or consent. Plaintiff denies that said Wood ever charged Miller with five hundred dollars, or any other sum of interest for money advanced by him, Wood, to the firm of Wood and Miller, for money which was never advanced, and charges that, under their contract, interest was to be allowed.

Plaintiff, further replying, denies that any fraudulent act or representation of said Wood was ever done or made to said Miller by said Wood. Denies that any fraudulent act or false representation of said Wood to said Miller ever became known to said Miller until after the purchase of the interest of said

Wood in and to said lands and the execution of said mortgage, or prior or subsequent thereto. Denies that said Miller, either immediately or ever discovered that any fraud had been practiced upon him by said Wood, or that he ever made any effort to gain possession of said note or mortgage; denies that he was unable to obtain possession of them, but charges that he could have obtained them at any time by paying off said debt, which he was invited to do very frequently, and he always insisting that he did not then have the money to pay with.

Plaintiff charges that said note and mortgage were assigned to plaintiff for a valuable consideration, and not for the purpose of enabling said Wood more effectually to cover up or perpetrate any fraud upon said Miller, and collect said note. Plaintiff denies that she had full knowledge, or any knowledge, at the time of the assignment of said note, or after, of any fraud practiced upon said Miller, or of his defence thereto, or of any failure of consideration of said note. Charges that said note was presented at its place of payment, and payment demanded, and the ssme was then and there protested for non-payment, and defendant William Miller notified of such protestation at its place of payment and of its protest in due form of law. Charges that plaintiff can collect the damages claimed because said note was not paid and has not been paid within twenty days after said protest for non-payment, nor has it yet been paid; and to defence that Mary Miller is not a proper party defendant, this plaintiff charges that such objections cannot be made in the answer, but only upon demurrer.

Plaintiff denies that said James Wood owed the said William Miller ten thousand dollars, or any other sum, at the commencement of this suit.

But plaintiff, for further replication, states that prior to the execution and delivery of the note and mortgage in said suit said James Wood and William Miller entered into a partnership agreement, by which they agreed to carry on business of general farming, stock raising, and doing business in the county of Atchison, and State of Missouri, each party contributtng six thousand dollars to said fund, which have been expended in the purchase of land, agricultural implements and stock, and had commenced the erection of necessary buildings on said lands, lying in Atchison county, Missouri, and to advance further sums for said business as it might be needed, and all expenses to be equally borne, and all profits equally divided. That said Wood should devote all his time and attention to said business, have the general supervision of the same, and receive as a compensation thereof eighty dollars per month until such time as said William Miller should contribute over six thousand dollars to the capital stock of said firm more than said Wood. Said Wood was to keep an account of all the firm transactions in regular book, open to the inspection of both parties. That, by a supplemental partnership agreement between said parties, all the household expenses of said James Wood should be borne equally by said partners, including house rent, fire-wood, hire of help, provisions, and all proper and necessary expenditures of such a family household.

Plaintiff avers that said James Wood and William Miller, under said partnership agreement, furnished each the sum of six thousand dollars, which money was expended in the purchase of eleven hundred and forty acres of valuable land in Atchison county, Missouri, as well as in the purchase of large lots of steers, cows, mules, agricultural and farming implements, building barns, stables and other buildings and houses.

That said six thousand dollars was all the money ever furnished by said Miller for said partnership purposes. That said Miller furnished to said Wood about four thousand dollars, which, by direction of said Miller, was invested in four hundred and forty acres of land in said William Miller's name and upon his own individual account, and title taken in his name alone for such land. That said partnership commenced in August, 1868, and was dissolved about March, 1870. That at said dissolution there was the following personal property on hands belonging to said firm of Wood & Miller, then being on said farm in Atchison county aforesaid, to-wit: 90 steers worth $3,600, 225 cows worth $5,625, mules worth $500, dairy and dairy fixtures and other personal property worth $2,000.

That said partnership was dissolved by mutual consent, on the 11th day of March, 1870, the said Wood selling to said William Miller all his interest in the lands and personal property of every kind belonging to said partnership, said Miller agreeing to pay said Wood for his interest in said partnership property the sum of six thousand dollars, with twelve per cent interest per annum from the time of investment by said Wood, and the books of the concern were to be settled up by some one not interested, and whatever said Wood had paid out in said concern to be paid him by said Miller. Said six thousand dollars was to be paid said Wood by said Miller as soon as the books and papers were all made out satisfactorily and deed made to said Miller, and it was further agreed that should there a balance on the final examination of books found in favor of said James Wood, the said William Miller was to allow the same rate of interest as on the first six thousand dollars; and further, said Miller was to pay said Wood eighty dollars per month salary, as per contract and understood interest, up to time when said Miller paid his six thousand dollars.

Plaintiff further charges that for a long time prior to said dissolution, as well as at some time said Miller was in Atchison county, Missouri, upon said partnership farm, and had had full opportunity to examine the same and all other property—cattle, cows, mules, farming implements, etc.,—upon the same, as well as the books and accounts of said firm, and had made full and complete examination of said farm and personal property and said books and accounts, and knew all about the same, as well as the costs thereof, as their value, and knew as much about said farm property and the state of the accounts as did the said Wood, and made his proposition to buy out said Wood's interest in said partnership effects with a full knowledge of all the facts. That, after said proposition had been accepted by said Wood and said books and accounts had been examined by a party not interested, and to the satisfaction of the said Miller, said Wood and Miller then and there adjusted and settled all their partnership matters and accounts, and it was then found that said Miller was indebted to said Wood on account thereof the sum of $9.381, as follows:

On account of moneys invested in land.......	$3,381.00
On account of money invested in cows, steers, mules and other personal property sold and invested..........................	6,000.00
	$9,381.00

For which amount said Miller afterwards executed to said Wood his two promissory notes for $3,000 cash, at sixty days, which he paid long after due, and also executed and delivered to said Wood the note in suit, and mortgage, as the balance due said Wood on said settlement.

That said settlement was made and said business transaction without either fraud or deceit or misrepresentation on the part of said Wood, and with not only the means of knowing but with a full knowledge of all the facts upon the part of said Miller, and a full accounting by said Wood for all moneys and business of said firm passing through his hands, and which was well known by said Miller. That said Wood and wife made a deed to said Miller to their interest in said 1140 acres of land, and a bill of sale of all said personal property, and delivered them over to said Miller. That the consideration executed in said deed was $9,381, the whole amount for lands and personal property, interest and salary; whereas, in fact, the consideration for said land was only $3,381, and all the balance was for personal property, interest and salary.

And having fully replied, plaintiff prays judgment, as is prayed in its original petition.

LEWIS, VORIES & VORIES,
For Plaintiff.

And again, at the regular January term, begun and held at the court house in the town of Rock Port, on the 15th day of January, 1872,—present, Hon. Bennet Pike, judge; B. K. Davis, prosecuting attorney; Don A. Colvin, sheriff; and Austin F. Tiffany, clerk,—and on the eighth day of said term—to-wit, on the 22d day of January, 1872,—the following further proceedings were had and done, to-wit:

STATE BANK OF NEBRASKA
against
WILLIAM MILLER.

And now comes the defendant herein, by his attorney, and amends his answer to plaintiff's petition by striking out all affirmative matter contained therein; and here also comes the plaintiff, and dismisses as to Mary Miller, one of the defendants herein, and withdraws that portion of the petition claiming ten (10) per cent damages for the protesting of the note sued on in this behalf, and, on agreement of parties, this cause is submitted to the court, and, after hearing the evidence adduced, it is considered by the court, and the same is so adjudged and decreed, that plaintiff recover of and against said defendant William Miller the sum of three thousand nine hundred and ninety-eight dollars and nine cents.

On the same day is the following proceedings:

STATE BANK OF NEBRASKA
against
WILLIAM MILLER.

This cause coming up for hearing upon the petition, answer and other pleadings in said cause, and no jury being demanded, it was submitted to the court upon said proceedings and the evidence in said cause, and the court therefore finds that for the purpose of securing the payment of the said note mentioned in said petition, dated March 24th, 1870, for the sum of $3,381, with ten per centum per annum interest thereon from date, due on or before April 1st, 1871, and executed to James Wood, the said defendant, by his certain mortgage of date of March 24th, 1870, conveyed to said James Wood the following-described land and real estate lying and being in Atchison county, in the State of Missouri, to-wit: The southeast quarter of section number twenty-four, in township number sixty-six, of range number thirty-nine, west 5th P. M., which said note and mortgage were, by said James Wood, before the maturity of said note, assigned and delivered to said plaintiff. That said note with the interest thereon, amounting to the sum of three thousand nine hundred and ninety-eight dollars and nine cents, is still due plaintiff and unpaid, and that plaintiff is entitled to a judgment therefor, as well as for a foreclosure of said mortgage and a sale of said land to satisfy said debt. It is therefore ordered, adjudged and decreed by the court that plaintiff have and recover of and from the said defendant the said sum of three thousand nine hundred and ninety-eight dollars and nine cents ($3,998.09), to bear interest from this date at the rate of ten per cent per annum until paid, and that plaintiff also recover from defendant the costs in this behalf. It is further ordered, adjudged and decreed that the equity of redemption of said defendant in and to said land—to-wit, the southeast quarter of section twenty, in township sixty-six, of range thirty-nine, west 5th P. M.—be and the same is hereby foreclosed, and the sheriff of Atchison county, in the State of Missouri, is hereby ordered to proceed to advertise and sell said real estate, for cash in hand, in the same manner as other lands are advertised and sold under execution; and it is further ordered, adjudged and decreed that if said land and real estate be not sufficient to satisfy said debt aforesaid of $3,998.09, with interest and costs, then the remainder thereof to be levied of other goods and chattels, lands and tenements, of said defendant, and that execution issue therefor.

Afterwards the following entry was made on the judgment docket pertaining to said cause:

"Satisfied without execution."

EXHIBIT N.

Be it remembered that on the 21st day of October, A. D. 1874, during the vacation of the circuit court of Atchison county, State of Missouri, a petition was filed in the office of the clerk of said court, wherein Henry F. Bean and John W. Alsop, under the firm name of Bean & Alsop, were plaintiffs, and William Miller was defendant; and at the same time they filed their bond and affidavit for an attachment against said William Miller, which bond is in words and figures following, to-wit:

Know all men by these presents, that we, Bean & Alsop, as principal, and Jacob Zimmerman, John P. Lewis and Geo. Denser, as security, are indebted to the State of Missouri in the sum of thirty-two thousand two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at Rock Port, Missouri, this 20th day of October, eighteen hundred and seventy-four. The consideration of this obligation is such that, whereas, said Bean & Alsop are about to institute a suit by attachment against William Miller, defendant, for the sum of sixteen thousand one hundred dollars and cents. Now, if the said plaintiff shall prosecute his action without delay and with effect, refund all sums of money that may be adjudged to be refunded to the defendant or found to have been received by the plaintiff and not justly due to him, and pay all damages that may accrue to any defendant or any garnishee, by reason of the attachment, or any process or process in the suit, or by reason of any judgment or process thereon, then this obligation to be void; otherwise to remain in full force.

H. F. BEAN. [SEAL.]
J. W. ALSOP. [SEAL.]
By JACOB ZIMMERMAN [SEAL.], Their Agent.
JOHN P. LEWIS. [SEAL.]
GEORGE DENSER. [SEAL.]
JACOB ZIMMERMAN. [SEAL.]

Approved October 21st, 1874.

JAS. M. TEMPLETON, Clerk.
Per J. W. SMITH, D. C.

And which affidavit attached is in words and figures following, to-wit:

In the Atchison Circuit Court, January Term, 1875.

H. F. BEAN and J. W. ALSOP, under the firm name of Bean & Alsop, *Plaintiffs*,
against
WILLIAM MILLER, *Defendant*.

STATE OF MISSOURI, }
County of Atchison. } ss.

Jacob Zimmerman, agent of the above named plaintiffs, upon his oath, deposes and says that the said plaintiffs have a just demand against the said defendant William Miller, and that the amount which he believes they ought to recover, after allowing all just credits and set offs, is the sum of sixteen thousand one hundred dollars, with interest; and that he has good reason to believe and does believe that the defendant William Miller is not a resident of this State.

That the defendant William Miller has fraudulently conveyed or assigned his property or effects so as to hinder and delay his creditors.

That the defendant is about fraudulently to convey or assign his property or effects so as to hinder or delay his creditors.

JACOB ZIMMERMAN.

Subscribed and sworn to before me, this 20th day of October, A. D. 1874.

JOHN P. LEWIS,
[SEAL.] Notary Public.

Also, on the 21st day of October, 1874, the following writ was issued:

STATE OF MISSOURI, }
County of Atchison. } ss.

The State of Missouri to the Sheriff of Atchison County, Greeting:

We command you to attach William Miller by all and singular his lands and tenements, goods, chattels, rights, moneys, credits, evidences of debt, and effects, or so much thereof as shall be sufficient to satisfy the sum of sixteen thousand one hundred dollars and ——— cents, with interest and costs of suit, in whose possession soever the same may be found, in your county, and that you summon the said William Miller that he be and appear before the circuit court of the county of Atchison on the first day of the next term thereof, to be holden at the court house in Rock Port, in the said county of Atchison, on the 18th day of January next, then and there to answer the petition of H. F. Bean and J. W. Alsop, wherein they ask judgment for sixteen thousand one hundred dollars, and that you also summon and all other persons that you shall find in the possession of goods, moneys or effects of the defendant not actually seized by you, and all debtors of the defendant, and such other persons as the plaintiff or his attorneys shall direct, as garnishees, to be and appear before our said court at the time and place aforesaid, then and there to answer such allegations and interrogatories as may be exhibited against them, and have you then and there this writ.

In testimony whereof the undersigned clerk of the said Atchison circuit court has hereto signed his name and affixed the seal of said court, at office, this 21st day of October, 1874.

JAMES M. TEMPLETON, Clerk.

Per J. W. Smith, Deputy.

With the following endorsements:

I executed the within writ this 21st day of October, A. D. 1874, in Atchison county, Missouri, by attaching all the right, title, interest and estate of the within-named defendant William Miller has in and to the following-described real estate, to-wit: The northwest fourth of the southeast quarter and the west half of the southwest quarter of section No. (18) eighteen, the south half of section No. (19) nineteen, the west half of the northwest quarter of section No. (19) nineteen, the southeast quarter of the southwest quarter of section No. (28) twenty-eight, in township No. (66) sixty-six, of range No. (38) thirty-eight, the east one-half, northwest fourth of the northeast quarter and the southeast quarter of section No. (24) twenty-four, the east half of the northeast quarter and the northwest fourth of the northwest quarter, the north half of the southeast quarter and the southwest fourth of the southeast quarter of section No. (25) twenty-five, township No. (66) sixty-six, of range No. (39) thirty-nine, as the property of the said William Miller, the above-named defendant, or so much thereof as will be sufficient to satisfy the within demand and costs of suit. I return Wm. Miller not found in my county.

HENRY WARNEKE,
Sheriff Atchison Co., Mo.

STATE OF MISSOURI, } ss.
County of Atchison. }

Be it remembered that a regular term of the circuit court in and for Atchison county, Missouri, and of the 29th judicial district of the State of Missouri, begun and held at the court house in Rock Port, in said county, on the 4th day of May, 1875,—present, Hon. Henry S. Kelley, judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff; and John W. Smith, clerk,—the following proceedings were had and done, to-wit:

On the 3d day of said term—to-wit, May 6th, 1875.

H. F. BEAN and J. W. ALSOP }
against
WILLIAM MILLER. }

Now comes the defendant, by his attorney, and files motion for continuance herein.

And on the same day of said term the following proceedings were had and done in said cause, to-wit:

H. F. BEAN and J. W. ALSOP }
against
WILLIAM MILLER. }

By agreement of parties, it is ordered by the court the plaintiffs have leave to file amended petition herein 60 days before the next term of this court; and it is further ordered that defendant have leave to file answer to plaintiffs' amended petition, having 30 days before the next term of this court. To which time this cause is continued.

In vacation of said court, to-wit: on the 14th day of July, 1875, the following amended petition was filed, as follows, to-wit:

Atchison County, Atchison Circuit Court, September Term, 1875.

HENRY F. BEAN and JOHN W. ALSOP, }
Plaintiffs,
against
WILLIAM MILLER, *Defendant*. }

The plaintiffs, for their amended petition, state that at the time of executing the contract and performing the work and labor, hereinafter mentioned, they were copartners, doing business under the firm name of Bean & Alsop, and that they are still such copartners.

That, heretofore, to-wit: on the 20th August, 1873, at the county of Hardin, in the State of Ohio, the plaintiffs, in their firm name of Bean & Alsop, and the defendant, in his individual name of William Miller, under their hands and seals, executed their certain contract, partly written and partly printed, which is filed in this case.

That said contract provides in substance as follows:

It was mutually agreed therein by defendant, as the party of the first part, and by the plaintiffs, as the party of the second part, that the plaintiffs should perform for defendant certain work and labor in the construction of a certain railroad, known and described in said contract as the "Chicago and Atlantic railway," consisting of clearing away the fences, trees, logs, brush and rubbish, grubbing up and removing stumps and other perishable matter, within certain prescribed limits, and in grading and excavating for road bed for distance of twelve miles along the line of said railroad, in the county of Marion, and State of Ohio, and particularly described in said contract as sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve of said road, the work to be commenced within ten days, and the first five miles to be done by October 15th, and the remaining seven miles to be finished in time for iron, said work to be done in a substantial and workmanlike manner.

That the defendant William Miller, in said contract agreed to pay plaintiffs from time to time, as hereinafter stated, for said work, at the following rates, to-wit: for that class of work in said contract denominated clearing, which consisted in removing from the full breadth of the road all trees, stumps, brush, logs, rubbish and other perishable matter, at the rate of twenty-five dollars per acre; for that class of work denominated grubbing, which consisted in digging out and removing all stumps and perishable matter within certain prescribed limits, at the rate of fifty dollars per acre; for that class of work denominated excavations of earth, which included all excavations and embankments required for the formation of road bed, side track, depot grounds, ditches, pits, road crossings, and all other excavations and embankments usually incident to the construction of a railway, at the rate of twenty-five cents per cubic yard for all earth removed or excavations done, and an addition of fifteen mills for cubic yard for each one hundred feet of haul over one thousand feet, all of which payments were to be made at the office of said William Miller, in Jenton, Ohio; and it was in said contract further agreed by said William Miller that the engineer of a company known as the "Western Railway Construction Company," or an assistant by his direction, should, as soon as practicable after the end of each month, make out an approximate estimate of the quantity and value of each species of work done pursuant to said contract at the prices aforesaid, and that he should also include the value of any work caused to be done by him, and that he should fix the price for such extra work.

Said William Miller further agreed in said contract to pay plaintiffs within fifteen days after the return of every such approximate estimate, a sum equal to eighty-five per cent of the sum appearing to be due for such month in accordance with such estimate.

Said defendant therein further agreed that within thirty days after said work should be completed and accepted by said engineer, a final estimate should be made, and the amount appearing due from accrued percentage and otherwise should be paid by said William Miller.

It was further mutually agreed in said contract that said work should be prosecuted without intermission and with such force as should, in the opinion of said engineer, be necessary to insure its completion within the time above mentioned.

It was further mutually agreed in said contract that at all times said engineer should have free access to the work at every point during its construction, for the purpose of inspection, and should any changes be made in quantity or alignment as shown in the original profiles, that no damage whatever should be claimed by reason of such changes, but that upon final settlement the amounts due for actual work done and accepted should be paid at schedule prices.

It was further mutually agreed in said contract that said work should be prosecuted in such order and with such progress as said engineer should direct, and it was agreed on the part of plaintiffs that on the event of a suspension of the work no claim should be made for damages that might arise incidentally out of such suspension or for anticipated profits. That soon after the execution of said contract the plaintiffs entered upon the performance of said work, and continued to work thereon until about the 10th of May, A. D. 1874. That by the end of the month of September, 1873, the plaintiff had performed a large amount of said work, as follows, to-wit: Twelve thousand five hundred cubic yards of excavation of earth, six acres of clearing and one and one-half acres of grubbing; that said engineer, and his assistants under his direction, returned at the end of seid month an approximare estimate of part of said work, to the amount of eleven thousand and ninety-three cubic yards of excavation, amounting, at twenty-five cents per cubic yard, to the sum of twenty-seven hundred and seventy-three and 25-100 dollars, eighty-five per cent of which sum these plaintiffs demanded of defendant, at his office in Kenton, Ohio, immediately after the expiration of fifteen days from the return of said estimate, but which defendant refused and failed to pay.

That by the end of the month of October, 1873, the plaintiffs had performed the following additional quantity of said work, to-wit: Twenty-two thousand five hundred cubic yards of excavation of earth, seven acres of clearing, three acres of grubbing, and had built ten miles of fence as extra work, under the instructions of said engineer, valued by him at fifty dollars per mile.

That said engineer, and his assistants acting under his instruction, returned, at the end of said month of October, estimates for part of said work, to-wit: For seventeen thousand five hundred and nineteen cubic yards of excavation of earth, amounting, at twenty-five cents per cubic yard, to the sum of four thousand three hundred and seventy-nine and 75-100 dollars, eighty-five per cent of which plaintiffs demanded of defendant at his said office after the expiration of fifteen days from the return of said estimate, but which defendant refused to pay.

That, by the end of the month of November, A. D. 1873, the plaintiffs performed an additional amount of said work, as follows, to-wit: Ten thousand cubic yards of excavation of earth, four acres of clearing, two acres of grubbing, and one mile of building fence as extra work, done under the direction of said engineer, and valued by him at fifty dollars.

That said engineer, and his assistants under his direction, made out an approximate estimate for part of said work, at the end of said month, as follows, to-wit: For five thousand five hundred and twenty-one cubic yards of excavation of earth, amounting, at twenty-five cents per yard, to the sum of fifteen hundred and eighty and 25-100 dollars, eighty-five per cent of which; immediately after the expiration of fifteen days from the return of said estimate, was demanded of defendant by plaintiff, which was refused.

That the following other estimates of work performed by plaintiffs under said contract were returned by said engineer, or his assistants under his direction, viz.: for the month of December, A. D. 1873, eight hundred and thirty-two cubic yards of excavation of earth, amounting to two hundred and eight dollars. For work done during January, 1874, five hundred and twenty-five cubic yards of excavation of earth, amounting to one hundred and thirty-one and 25-100 dollars. For work done during February and March, A. D. 1874, together, thirty-eight hundred and sixty-seven cubic yards of excavation of earth, amounting to nine hundred and sixty-six and 25-100 dollars. That at the end of fifteen days after the return of each of said estimates, the plaintiffs demanded payment from defendant, at his said office, of eighty-five per cent of said estimate, which was refused by defendant.

That plaintiffs continued in the performance of said work up to about the 10th day of May, 1874, but that no other estimates were ever made to plaintiffs' knowledge.

That plaintiffs performed large quantities of work under said contract, which, so far as they are informed, was never included in any estimate or estimates made by said engineer or his assistants, so that the whole amount of work performed by plaintiffs under said contract, estimated and unestimated together included, amounts to fifty-eight thousand nine hundred and seventy-three cubic yards of excavation of earth, three thousand cubic yards of which was hauled two thousand feet, amounting, at the rates heretofore mentioned, to the sum of fourteen thousand eight hundred and ninety-three and 25-100 dollars; twenty-eight acres of clearing, amounting, at twenty.five dollars per acre, to the sum of seven hundred dollars; eight acres of grubbing, amounting, at fifty dollars per acre, to the sum of four hundred dollars, and building four miles of fence, valued by said engineer at two hundred dollars, making a grand total of sixteen thousand and ninety-three dollars due plaintiffs for all the work performed by plaintiffs for defendant under said contract, which said sum is a reasonable and fair value for said work.

That plaintiffs performed all the conditions required of them by said contract, except so far as prevented by the unwarrantable failures, defaults and interferences of defendant, as hereinafter set forth.

That it was the duty of defendant to secure, or cause to be secured, the rights of way from the owners of the land over which said road was to be constructed.

It was also his duty to see that the road was properly surveyed and the work staked out as otherwise designated, so that plaintiffs could tell where defendant desired said work to be done.

That defendant did not have said work surveyed and marked out, so that plaintiffs could commence work thereon under twelve days from the date of said contract, nor had defendant secured the rights of way from the owners of the land where said work was to be commenced until after the expiration of ten days from the date of said contract, by reason of which failures and defaults of defendant the plaintiffs could not and did not commence until the twelfth day after the date of said contract, though they were ready to commence within five days after said contract was made.

That after the commencement of said work, plaintiffs were very much annoyed and delayed during the whole time they were engaged upon said work, by reason of the failure of defendant to secure the rights of way from many of the owners of the land over which said railroad was to be built, so that plaintiffs were in many places prohibited from working on said road by said owners, and could not work there without becoming trespassers.

That defendant never did secure the right of way from very many of the owners on either the first five miles or on the remaining seven miles of said road contracted to plaintiffs. That both said engineer and said defendant instructed plaintiffs not to work where the right of way was not released. That, by reason of defendant's failure to survey, mark out and designate the work to be done in time for plaintiffs to commence at the time designated in said contract, by reason of defendant's failure to secure said right of way so that plaintiffs could perform said work, and by reason of defendant's failure to pay the amounts of money coming due to them from month to month, as provided in said contract, by the 15th day of October, 1873, and for the same reasons, they have not been able to complete it at all, nor have they completed the remaining seven miles. But allege that they did all they could reasonably do under the circumstances until the 10th day of May, 1874, when they abandoned said work and demanded of defendant, at his said office, as well as at other places, payment for the full value of the work performed by them, as hereinbefore stated, which defendant refused to pay, though defendant frequently, during the performance of said work and since its abandonment, has promised to pay plaintiffs for the amount of work done by them.

Plaintiffs state that defendant paid to one Jacob Zimmerman, for them, the sum of fifty dollars, but that the balance due plaintiffs for said work, after deducting said fifty dollars, is sixteen thousand and forty-three dollars, together with interest thereon from May 10th, 1874, at the rate of six per cent per annum, for all of which plaintiffs ask judgment, and for costs of suit.

LEWIS & ESTEP,
Attorneys for Plaintiffs.

In vacation of said court—to-wit, on the 3d day of September, 1875,—the following answer to amended petition was filed in said cause:

In the Atchison County Circuit Court. To September Term, A. D. 1875.

Henry F. Bean and John W. Alsop,
Plaintiffs,
against
William Miller, *Defendant.*

Defendant, for answer to plaintiffs' amended petition, admits that he and plaintiffs made the contract filed with plaintiffs' original petition in this case, but he denies that he ever entered into the contract as set out and described in plaintiffs' amended petition, or the substance thereof.

Admits that it was agreed in said contract that plaintiffs were to perform work for defendant in and upon the construction of a certain railway known as the "Chicago and Atlantic Railway," in excavating earth, clearing and grubbing, and removing fence for a distance of twelve miles, and known as sections from 1 to 12, and that said work was to be commenced in ten days from August

20th, 1873, and the first five miles thereof to be completed by October 15th, 1873, and the remaining seven miles in time for the iron, and the work to be done in a substantial, workmanlike manner; but defendant charges that the contract contained the further provision that said work shall be steadily prosecuted without intermission, with such force as shall, in the opinton of the engineer, secure its final completion on or before, the first five to be done October 15th, and the other seven to be finished in time for iron, unless prevented by written orders from the engineer.

Defendant further avers that said contract contained the further provision that it is further understood and agreed that the party of the second part (the plaintiffs) shall not let or transfer this contract, or any part thereof, to any person excepting for the delivery of materials, and will give personal attention and superintendence to the work.

Defendant avers that said agreement contains the further provision that said plaintiffs covenanted and agreed to construct and finish in the most substantial and workmanlike manner, to the satisfaction of the engineers of the Western Railway Construction Company, the said work so contracted to be done.

But defendant denies that plaintiffs, soon after the execution of said contract, entered upon the performance of said work, or continued to work thereon to about May 10th, 1874, and charges that plaintiff, about the 10th day of September, 1873, commenced work on the last five miles of said contract, and that, in violation of said contract and against the consent of defendant, sub-let the said 12 miles thereof to various parties to the defendant unknown, and failed and refused to give to the said work their personal attention and superintendence.

Defendant denies that at the end of the month of September plaintiffs had performed on the work not sub-let twelve thousand five hundred cubic yards of excavation of earth, or any number of yards, or any work thereon, or cleared six acres of ground or any part thereof, or did any grubbing.

And denies that the engineer in charge of said work, or his assistant, made out or returned any estimate of any work done by plaintiff on said work not sublet, amounting to eleven thousand and ninety-three cubic yards of excavation, or any number of yards of same, or ever returned to plaintiffs any estimate or account of said work, or that any demand was ever made by plaintiffs upon defendants for work done by plaintiffs on the last five miles of said contract.

Defendant admits that some parties to whom plaintiffs sublet the first seven miles of said contract during the month of September, 1873, did work upon said seven miles to the amount of about ten thousand cubic yards of excavation, but he charges that said work was sublet by plaintiffs to said parties in violation of said contract, that this defendant never accepted said work, and is not responsible for any work not done by plaintiffs.

Defendant denies that during the month of October, 1873, plaintiffs did work on their contract amounting to more than ten thousand cubic yards of excavation, or more than one acre of clearing, or one acre of grubbing, or built more than one mile of fence, and denies that said engineer estimated said work more than ten thousand cubic yards of excavation, or that plaintiffs ever demanded payment for said work.

Defendant admits that parties to whom plaintiffs sublet the same said contract during the month of October, 1873, did work upon said seven miles to the amount of five thousand yards of excavation, but he charges that said work was sublet by plaintiffs to said parties in violation of said contract, that this defendant never accepted said work, and is not responsible for any work not done by plaintiffs or under their supervision.

Defendant denies that during the month of November, 1873, the plaintiffs, on said last five miles of their contract, or on any or all of it, did more than four thousand yards of excavation, or one acre of clearing, or one acre of grubbing, or any fencing, or that said engineer for said month estimated for plaintiffs any more than four thousand cubic yards of excavation, or that plaintiffs ever demanded the pay thereof, or did any work except through sub-contractors.

Denies that the engineer, for the month of December, 1873, estimated the work done by plaintiffs under said contract at more than five hundred yards of excavation, or for January, 1874, at any number of yards, or for work done in February and March, 1874, by plaintiffs, over three thousand yards of excavation, or the plaintiffs ever demanded payment under said estimate.

But defendant expressly denies that plaintiffs continued in the performance of said work to or about the 10th day of May, 1874. Admit that no other estimates were ever made, but deny that large quantities of work (or any work) under said contract were ever performed and not included in any estimates made by the engineer. Charge that the engineers not only included in his estimates all the work done by plaintiffs, but also a large amount of work done by other parties on sub-contract from plaintiffs on said 12 miles in violation of said contract between plaintiffs and defendant, to-wit: twenty thousand yards of excavation, 10 acres of clearing, 7 acres of grubbing, and three miles of fence, for which amount this defendant is not liable on his contract.

But this defendant denies that the whole amount of work done by plaintiffs was fifty-eight thousand nine hundred and sixty-three cubic yards, or that any part of earth was hauled two thousand feet, or over one thousand feet, or that plaintiffs cleared more than twelve acres of ground, or did more than four acres of grubbing, or built more than two miles of fence.

Defendant denies that the sum charged by plaintiff is a reasonable and fair value for the work done.

This defendant denies that plaintiffs performed all the conditions required of them by said contract, or that they were prevented from so doing by any failure, default or interference of defendant, as set forth by plaintiffs or otherwise, and charges that plaintiffs never did construct any part of said work to the satisfaction of the engineers in charge of said work.

Defendant denies that it was the duty of defendant to either secure or cause to be secured the right of way from owners of lands over which said road was to be constructed, or his duty to see that the road was properly surveyed and the work staked out, or otherwise designated, so that plaintiffs could tell where defendant desired the work to be done.

But defendant avers that under said contract it was no part of his duty any more than plaintiffs' to secure the right of way over lands, or set stakes, or make surveys; neither was it his duty outside of his contract.

But he charges that said work was svrveyed by the engineer in charge of the same, and marked out a part as the same was required by plaintiffs; also charges that the right of way was secured so that plaintiffs could have commenced work in ten days after their contract, but that they failed to do so without any fault of defendant.

Defendant denies that after plaintiffs commenced work, they were either annoyed or delayed during said work by reason of any failure of the defendant to secure the right of way from the land owners, or was prohibited from working by said land owners. He admits that he never did secure the right of way over any part of said contract, and charges that it was neither her duty nor his obligation under said contract so to do.

This defendant denies that the engineer or defendant ever instructed plaintiffs not to work where the right of way was not released, and charges that said work under the contract was to be performed under the direction and supervision of the engineer in charge of said work, or his assistant; and it was further provided by said contract that the work should be steadily prosecuted without intermission, unless prevented or delayed by written order from the engineers. And further, defendant charges that plaintiffs were not at any time either prevented or delayed in said work by the written orders of the engineer.

And defendant charges that about May, 1874, plaintiffs, without the written order of said engineer, suspended and abandoned said work under their contract, without any failure by defendant to comply with any of the conditions of his contract by him to be performed. He also denies that plaintiffs did all in their power that they could reasonably do under their contract till the 10th day of May, 1874.

Defendant admits that he has paid the defendants only the sum of fifty dollars, but he charges that he has at all limes been, and still is, ready to settle with and pay plaintiffs the full amount due them under said contract, and says that he is under no obligation to pay plaintiffs the amount of work done by their subcontractors in violation of their contract with him; that defendant never consented to such sub-letting, never acknowledged such work as done under said contract, and never accepted the same, either from said sub-contractors or plaintiffs, and the same has never been received from defendant by said railroad, and the whole amount thereof—twenty thousand cubic yards of excavation—is wholly useless and valueless.

And defendant, for a counter claim and recoupment, charges that by reason of the failures of plaintiffs to prosecute said work in accordance with their contract, and the failure to complete the same within the time specified, and the abandonment thereof, defendant has been damaged in the sum of five thousand dollars, which he prays may be allowed by way of damages and recoupment in this action, and for all other relief.

ALLEN H. VORIES,
Att'y for Defendant.

At the regular September term, 1875, of the Atchison county circuit court—present as officers of said court, Hon. Henry S. Campbell, judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff; and John W. Smith, clerk,—the following further proceedings were had and done in said cause, towit:

BEAN & ALSOP, *Plaintiffs*,
against
WILLIAM MILLER, *Defendant*.
} Civil Action.

Now comes the said defendant, by his attorney, and files his application for a continuance, which is granted. It is therefore ordered that this case be and the same is hereby continued to the next term of this court, at the cost of the said defendants.

And again, at the regular January term, 1876, of the Atchison county circuit court, begun and held at the court house in the town of Rock Port, in said county, on the 18th day of January, 1876,—present as officers of said court, Henry S. Kelley, judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff; and John W. Smith, clerk,—and on the 2d day of said term—to-wit, January 19th, 1876,—the following proceedings were had and done in said case, to-wit:

H. F. BEAN and J. W. ALSOP,
Plaintiffs,
against
WILLIAM MILLER, *Defendant*.
} Civil Action by Attachment.

Now comes the defendant, by his attorney, and files his petition and affidavit for a continuance.

And again, on the 3d day of said term,—to-wit, January 20th, 1876,—the following further proceedings were had and done in said cause, to-wit:

H. F. Bean and J. W. Alsop, *Plaintiffs,*
against
William Miller, *Defendant.*
} Attachment.

Now comes the defendant, by his attorney, and, on their application, it is ordered by the court that this cause be and the same is hereby continued at the cost of defendant herein.

And again, at the regular May term, A. D. 1876, of the Atchison county circuit court, begun and held at the court house in the town of Rock Port, in said county, on the 2d day of May, 1876,—present as officers, Hon. Henry S. Kelley, judge; John D. Campbell, prosecuting attorney; Henry Warneke, sheriff; and John W. Smith, clerk,—and on the ninth day of said term—to-wit, May 10th, 1876,—the following were had and done in said court, to-wit:

Henry F. Bean and John W. Alsop,
Plaintiffs,
against
William Miller, *Defendant.*
} Civil Action.

Now come the plaintiffs, by their attorney, and file their replication to defendant's answer, amended by interlineation, which is as follows, to-wit:

Henry F. Bean and John W. Alsop,
under name of Bean & Alsop,
Plaintiffs,
against
William Miller, *Defendant.*

In the Atchison County Circuit Court.

Plaintiffs, for reply to defendant's answer, amended by interlineation,—

Deny that, in violation of said contract, they sub-let the whole of said twelve miles of said railroad to various parties unknown to defendant. Admit that sections eight, nine, ten, eleven and twelve were, by plaintiffs, sub-let to various parties, the last three sections to Jacob Zimmerman, and the other two to a Mr. G. P. Rhodes and a Mr. Phelps; that is to say, plaintiffs arranged with said Rhodes, Phelps and Zimmerman to do said work for plaintiffs, but plaintiffs aver that such sub-letting of said last five sections, eight, nine, ten, eleven and twelve, was done with the knowledge, consent and at the solicitation of said William Miller, the defendant, and that he has repeatedly, during the progress of said work and since its abandonment, consented to, and waived all objections on account of, such sub-letting.

Deny that they did not give said work their personal supervision or attention, though they admit they did not perform the work done on the last five miles in person.

Denies that defendant never accepted said work, or that he ever objected to the manner of its performance.

Admit that said engineer included in his estimates both the work performed on the first seven miles done by plaintiffs and their servants and agents in person, and the work done on the last five miles performed through said sub-contractors, but aver that said Miller waived all objections thereto.

Deny that the work was surveyed by the engineer having charge of said work and marked out as the same was required by plaintiffs.

Deny that the right of way was secured in time for plaintiffs to have commenced work in ten days from the date of said contract.

State that said work was performed under the direction and supervision of the engineer in charge of said work, and his assistants, and in the order designated by them.

Deny that they abandoned said work without any failure of the defendant to comply with the conditions of said contract, but that the work was abandoned for the reasons mentioned in their petition.

Plaintiffs allege that defendant has repeatedly promised to pay for all work done by plaintiffs, including the work done for them by said sub-contractors, but, as alleged in their petition, he has never done so.

Deny that defendant did not consent to such subletting, but allege that he urged all parties connected with said work to continue in its performance.

Deny that any of the work performed on said 12 miles under said contract was valueless to defendant.

Deny that plaintiffs failed to perform said work to the satisfaction of said engineer in charge of said work, so far as it was performed.

Deny that defendant has been damaged in the sum of five thousand dollars, or any other sum, by reason of the failure of the plaintiffs to perform any of the conditions of said contract.

Deny that they failed to perform any of the conditions of such contract, except such as were caused by the unwarrantable defaults, acts and failures of defendant.

LEWIS & ESTEP,
Attorneys for Plaintiffs.

And again, on the 10th day of said term, to-wit: May 11th, 1876, the following further proceedings were had and done in said cause, to-wit:

HENRY F. BEAN and JOHN W. ALSOP, *Plaintiffs*, *against* WILLIAM MILLER, *Defendant*.	Civil Action.

And now here at this day come the said plaintiffs, by their attorney, and ask and obtain leave to reply to defendant's amended answer, filed herein by interlineation, which is accordingly done; and come the parties aforesaid, by their respective attorneys, and the issue being joined, and both parties announcing themselves for trial, by order of the court here comes a jury, to-wit: George L. Bishop, George Frielhoffer, John Wright, M. F. Hoover, A. J. Carmine, Peter Walter, J. W. Findlay, Stephen South, Henry Burnham, Oliver Holland, John Shelters, Atty Cole—twelve good and lawful men, citizens and householders of said county, and being duly empaneled and sworn well and truly to try the issues joined between the parties herein, and after hearing the testimony advanced, the argument of counsel, and having received the instructions of the court, returned into court here the following verdit, to-wit:

We the jury find for the plaintiffs the sum of.	$12,747 00
Interest	1,529 60
	$14,276 60

GEORGE L. BISHOP, Foreman.

It is therefore considered and adjudged by the court that the said plaintiffs recover of and against the said defendant the said sum of fourteen thousand two hundred and seventy-six dollars and sixty cents, so found by the jury, for their demand in the premises and that the said plaintiffs recover of and against the said defendant the costs about and in this behalf laid out and expended, and that execution issue therefor.

And again, on the same day of said term, the further following proceedings were had and done in said cause, to-wit:

HENRY F. BEAN and JOHN W. ALSOP, *Plaintiffs*, *against* WILLIAM MILLER, *Defendant*.	Civil Action.

Now here, at this day, comes the said defendant, by his attorney, and files his motion to set aside verdict of the jury rendered in this above-entitled cause, and grant him a new trial of the same; and come the said parties, by their respective attorneys, and this motion coming on for hearing, and the court being advised fully in the premises, overrules said motion. And thereupon, here comes the said defendant, by his attorney, and files his affidavit for an appeal, which is granted. Therefore it is ordered by the court an appeal of the above-entitled cause be allowed to the supreme court of the State of Missouri. And it is agreed between the parties that the said defendant have leave to file his bill of exceptions within forty days of this date.

And afterwards, to-wit: on the 14th day of June, A. D. 1879, the following mandate of affirmance was filed in said cause, in words and figures following, to-wit:

Supreme Court of Missouri, April Term, 1879.

HENRY F. BEAN and JOHN W. ALSOP, *Respondents,*
against
WM. MILLER, *Appellant.*
} Appeal from Atchison Circuit Court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, now being sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by the Atchison county circuit court rendered, be in all things affirmed and stand in full force and effect. And it is further considered and adjudged by the court that the said respondents recover against the said appellant their costs and charges herein expended, and have therefor execution. (Opinion filed.)

And afterwards, on the 14th day of August, A. D. 1879, the following execution was issued thereon, to wit:

GENERAL EXECUTION.

STATE OF MISSOURI, }
County of Atchison. } ss.

The State of Missouri to the Sheriff of Atchison County, Greeting:

Whereas, H. F. Bean aad John W. Alsop, under the firm name of Bean & Alsop, on the 8th day of May, in the year of our Lord eighteen hundred and seventy-six, at our said circuit court for said county of Atchison, recovered against William Miller, a suit by attachment, the sum of fourteen thousand two hundred and seventy-six dollars and sixty cents, and also their costs, which have been taxed the sum of one hundred nineteen dollars and five cents.

These are therefore to command you, that of the goods and chattels, lands and tenements, of the said William Miller you cause to be made the debt, interest and costs aforesaid, and that you have the same before the judge of our said court on the fourth

Monday in September next, to satisfy said debt, interest and costs, and have you then and there this writ, certifying how you have executed the same.

Witness John W. Smith, clerk of our said court, with the seal thereof. Done at office in Rock Port, Mo., in the county aforesaid, on the 14th day of August, 1879.

JOHN W. SMITH, Clerk.

Statement of Debt and Costs.

Debt	$14,276,60
Interest Aug. 14th, 1879	4,639.90
Clerk's fees	22.10
Sheriff's fees	4.70
Witness fees	67.75
Printer's fees	25.50
Total	$19,026.55

Received by me this 15th day of August, 1879.

THOS. H. OLIVER, Sheriff.

SHERIFF'S RETURN.

Executed the within writ in the county of Atchison, State of Missouri, on the 23d day of August, A. D. 1879, by levying and seizing all the right, title, interest and claim that the within-named defendant William Miller has in and to the following-described real estate, to-wit: The northwest one-fourth of the southeast quarter and the north half of the southwest quarter of section No. (18) eighteen, the south half of section No. (19), the west half of the northwest quarter of section No. (19), and the southeast fourth of the southwest quarter of section No. (28), township No. 66, of range No. 38; the east half of northwest fourth of the northeast quarter and the southeast quarter of section No. (24), the east half of the northeast quarter, the northwest fourth of the northwest quarter and the southwest fourth of the southeast quarter of section No. 25, township No. 66, of range No. 39, as the property of the said William Miller.

THOMAS H. OLIVER,
Sheriff Atchison County, Mo.

Memorandum on back of execution as follows:

Received on execution Oct. 17th; 1879, $3,257.20.

EXHIBIT O.

Copy of assignment on deed of trust executed November 10th, 1873, by William Miller and Mary Miller, to Wm. L. Patterson, trustee, for the purpose of securing sixteen thousaud dollars to Mary Miller. Recorded in Book 8, at page 41, of mortgages.

I, Mary Miller, and William Miller, her husband, do hereby, for and in consideration of the sum of twelve thousand dollars, assign, transfer and set over to Eli J. Seager the within deed of trust and all interest in the debt secured thereby, this 3d day January, 1876.

MARY MILLER.
WILLIAM MILLER.

Witness: M. McKILLOP.
S. S. HUGHES.

EXHIBIT P.

JOHN P. LEWIS,
Attorney at Law and Real Estate Agent,
Rock Port, Mo., Sept. 15, 1876.

Notice read before sale of Miller lands under trust deed in favor of Mary Miller.

On behalf of Henry F. Bean and John W. Alsop, I hereby notify all parties that the land offered for sale to-day was attached as the property of William Miller, by said Bean and Alsop, to satisfy a claim of $16,100.00; that judgment was rendered on said attachment in May, 1876, for $14,276.60, which has not been paid, and that said Bean and Alsop have now pending in the Atchison county circuit court a suit to set aside the trust deed under which this sale is sought to be made, for the purpose of securing said land for payment of the debt sued for in said attachment.

JOHN P. LEWIS, Att'y.

TRUSTEE'S SALE.

Whereas, William Miller, and Mary Miller his wife, by their deed of trust dated the 10th day of November, 1873, which deed was duly recorded in the office of the recorder of deeds, on page 41 of book 8, of mortgage records of Atchison county, Missouri, conveyed to William L. Patterson, as trustee, the following-described real estate, situate, lying and being in the county of Atchison, and State aforesaid, to-wit: The northwest fourth of the southeast quarter and the west half of the southwest quarter of section number eighteen (18), the south half of section number nineteen (19), the west half of the northwest quarter of section number nineteen (19), the southeast fourth of the southwest quarter of section number twenty-eight (28), in township number sixty-six (66), of range number thirty-eight (38); the east half and the northwest fourth of the northeast quarter of section number twenty-four (24), the east half of the northeast quarter and the northwest fourth of the northwest quarter, the north half of the southeast quarter and the southwest fourth of the southeast quarter of section number twenty-five (25), all in township number sixty-six (66), of range number thirty-nine (39), to secure the payment of a certain debt therein described; and whereas said debt is due and remains unpaid.

And whereas, in said deed of trust it was provided that in case the trustee therein named should be dead or absent from the State, that the then acting sheriff of Atchison county, Missouri, might proceed to advertise and sell said land at public auction, for cash in hand, to the highest bidder, first giving sixty days' public notice of the time, terms and place of sale, with a description of the property to be sold, by advertisement, printed in some newspaper printed in Rock Port, Atchison county, Mo.

Now, therefore, the said William L. Patterson, trustee as aforesaid, being absent from the State, at the request of the *cestui qui* trust in said deed of trust, and assignee of said debt, and by virtue of the power in me vested by said deed of trust, I will, on Saturday, the 16th day of September, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of that day, at court house door in the town of Rock Port, Atchison county, Missouri, sell the above-described real estate at public auction, to the highest bidder, for cash, and apply the proceeds of the sale to the purposes mentioned in said deed of trust.

HENRY WARNEKE,
Sheriff of Atchison County, Mo.

And the said HENRY WARNEKE, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

My name is Henry Warneke. My age is 34. I reside in Rock Port, Atchison county, Missouri. My occupation is a merchant. I have lived here since 1866. I was sheriff of Atchison county, Missouri, from 1872 to 1876. I was acquainted with one William Miller. He lived about twenty miles from Rock Port, in the northeast part of the county.

On what farm did he reside?

On his own, I suppose. It was known as the Miller farm.

Who first improved the farm?

Wood and Miller.

Who now occupies the place?

E. F. Powell.

What was Miller's financial condition about the time he left this county, or from 1874 to 1876?

It was not considered very good.

You may state whether any executions were in your hands, as sheriff, against William Miller? [Objected for reason that better evidence can be produced.]

There was.

What property, if any, has William Miller in this county, or anywhere else, that you know of?

He has not any in this county that I know of, nor do I know of any any place else. I don't know what he has elsewhere.

State whether any of his lands were ever advertised at sheriff sale for payment of his debts. [Objected for reason that better evidence can be produced.]

I advertised his lands for sale while I was sheriff. I think on a Herman Koontz judgment. The sale was ordered held up by plaintiff's attorney.

About what is the annual rental value of the Wood and Miller farm?

I should judge the land is worth an average from $2.00 to $2.50 per acre. HENRY WARNEKE.

Subscribed and sworn to before me, on the day, at the place and within the hours first aforesaid.

My commission expires February 27th, 1883.

[SEAL.] JAMES M. OSBORNE, Notary Public.

ELI J. SEAGER, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Question 1. What is your name, age and place of residence?

Answer. Eli J. Seager; 62 years; and residence, Allentown, Pennsylvania.

Q. 2. Are you the Eli J. Seager who is one of the respondents in a suit formerly pending in the circuit court of Atchison county, in the State of Missouri, but now pending in the circuit court of the United States for the western district of Missouri, western division thereof, in which Henry Bean and John W. Alsop are complainants, and William L. Patterson, William Miller, Mary Miller his wife, Eli J. Seager, Melchor H. Horn and others are respondents?

A. Yes.

Q. 3. Please state whether your deposition was taken in this case prior to the time of the transfer to said circuit court of the United States?

A. Yes.

Q. 4. In the deposition so given by you, in answer to question four of your examination-in-chief, in which you are asked to state how you were paid this amount of twelve thousand dollars, stating in your previous answer you said, "I was paid that amount by the assignment of a deed of trust dated the 10th day of November, 1873; the date of the assignment to me is the 3d day of January, 1876; the deed of trust was made and executed by Mary Miller to William L. Patterson, in trust for Mary Miller, upon lands in Atchison county, Missouri, said deed of trust being recorded in Atchison county, Missouri, in the recorder's office, in book No. 8, page 41, on the 7th day of February, 1874; the amount of the deed is sixteen thousand dollars, and the number of acres one thousand and eighty acres, more or less." Now, you will please state whether William Miller, prior to said 3d day of January, 1876, ever agreed to secure this debt by mortgage or deed of trust on this Missouri land now in controversy, and if so, how long prior to said 3d day of January, 1876; and whether Mary Miller ever made any assignment to you of said deed of trust on said Missouri lands prior to said date last aforesaid, and if so, state when and by what instrument of writing, if any; and if any writing, please annex the same to this deposition as an exhibit. [Objected to as leading and indefinite.]

A. Several times before this thing, or deed of trust, was transferred or assigned to me,—I think the spring and summer of 1875—he agreed to give me a deed of trust on these lands, and the last time I saw him in reference to it he said he hadn't the deeds or papers with him, but he would immediately execute it when he returned home, and send it to me; this was intended to secure these twelve thousand dollars; he never sent it to me. Mrs. Miller assigned to me the deed of trust referred to by an assignment dated October the 6th, 1875, and I herewith hand the paper, and is marked "Exhibit A."

Q. 5. Please state whether or not one hundred and sixty acres of the most valuable land in the "Miller tract," supposed to be embraced in the deed of trust assigned to you by Mary Miller, has not, by mistake or otherwise, omitted from the description given of those lands, and if so, when was that fact discovered by you, and how much was your security impaired or diminished thereby?

A. The deed of trust was intended and so represented as to contain the whole of the Miller tracts; one hundred and sixty acres, we ascertained, upon which the main buildings of the farm were located, were not contained in that deed of trust. This was ascertained shortly before the sheriff's sale of the land. According to the sale of the one hundred and sixty acres, which brought thirty-five hundred dollars, that must be the amount impaired.

Q. 6. Did you get a sheriff's deed under the trustee's sale for the lands in controversy? and if so, please present the same as an exhibit in this case.

A. I got a sheriff's deed for these lands, and which is hereto annexed and marked "Exhibit B."

Q. 7. Have you in your possession the assignment of the deed of trust by Mary Miller and William Miller, her husband, upon the deed of trust made by William Miller to William L. Patterson, of date 3d of January, 1876? If so, please present the same as an exhibit.

A. I have, and the same is hereto annexed, and marked "Exhibit C;" and also the deed of trust, marked "Fxhibit D."

Q. 8. In your former deposition, in answer to question 10, in your cross-examination, where the question puts in the following words: "State whether or not your purchase of the deed of trust and the purchase by Horn and Weaver of the land are not one and the same transaction, and whether you are not now all three interested as owners in this land, "you say: "The purchase of the deed of trust and the purchase of the land were made at the same time, I think, and all are owners under the sale, but in different interests, and other parties are interested besides us." Now please state all the facts connected with the purchase of this deed of trust, and whether the purchase by Horn and Weaver was or was not subject to the deed of trust purchased by you. [Objected to for the reason that it is in the nature of cross-examination and assumes that respondents' own witness did not in that deposition testify to the facts.]

A. The deed of trust was purchased by me and assigned by Mrs. Miller to secure the payment of twelve thousand dollars which William Miller owed me. The lands were purchased by Horn and Weaver, and their purchase was subject to this deed of trust. I agreed afterwards to go in with them to purchase these lands, but it was always understood that this trust deed was a lien and was to be paid.

Q. 9. Please state whether or not the arrangement between yourself and Horn and Weaver to own said lands in controversy in proportion to your several interests was not entered into and consumated subsequently to your purchase of the deed of trust, and whether or not their interests in said lands were not at all times to be subject to your title under the trust deed? [Objected to as leading.]

A. Yes.

Q. 10. State whether or not, at the time of your purchase of the Miller deed of trust and the purchase of said lands by Horn and Weaver, from Miller, there was any such company as the "Lehigh Land Company" known, and if not, when did it originate, and how?

A. There was no such company at the time of the purchase of the deed, if I recollect correctly; it was formed after W. B. Powell & Son purchased a part of my interest.

CROSS-EXAMINATION.

Cross X 1. At what time and what interest did you give to W. B. Powell & Son?

A. I don't recollect the exact time. I think the interest I sold them amounted to one-fifth of the whole.

Cross X 2. What do you mean by one-fifth of the whole?

A. One-fifth of the joint interest in all the lands.

Cross X 3. Did you make this sale before or after your purchase under the trust deed?

A. It was sold after the purchase of the trust deed. He may have spoken about it before or after; I don't know.

Cross X 4. Do you mean after the purchase of the trust deed or the sale under the trust deed?

A. I mean after the purchase of the trust deed.

Cross X 5. State whether you had any conversation with Messrs. Powell & Son about this sale to them prior to the execution of the deed from William and Mary Miller to Horn and Weaver? [Objected by respondents as irrelevant.]

A. I think I had a conversation with them about that time, but they would not purchase until after they had gone out and seen the land.

Cross X 6. State at what time the contract was entered into between yourself, Messrs. Horn and Weaver and others to become jointly interested in these lands, and was your contract ever reduced to writing?

A. I don't think it was finally concluded until after the purchase by Powell. It was spoken of and partially agreed to go into the arrangement, and Mr. Horn and Weaver were to purchase the lands for their joint interest, and I suppose did so; that is, for Horn, Weaver and myself and the bank (National Bank of Catasauqua). I can't now state whether the contract was reduced to writing.

Cross X 7. Who conducted the principal portion of the business in the purchase of these lands, and who now acts as chief officer or member among you in attending to the business?

A. Horn and Weaver purchased the land; Horn and Weaver are the active officers or members.

Cross X 8. Which of them does the correspondence and keeps the accounts of the firm?

A. M. H. Horn does the principal correspondence and keeps the accounts.

Cross X 9. Were you present in Missouri at the time of the conveyance from Miller and wife to Horn and Weaver, and of the assignment on the back of deed of trust to you?

A. I was not.

Cross X 10. State whether you knew of Mr. Horn's intended visit to Missouri for the purchase of those lands prior to his going there?

A. I did.

Cross X 11. State whether the price to be paid and the manner of payment had been agreed upon prior to Mr. Horn's visit to Missouri; and if so, whether it was not fully agreed that your twelve thousand dollars should go in as part of the purchase price? [Question and answer objected to by respondent as incompetent and irrelevant.]

A. I think the price per acre was agreed to. They were to take the lands subject to this deed of trust, and they bought it subject to this deed of trust. The other payments were arranged out there—that is my recollection—by Horn and Weaver.

Cross X 12. How long had you been negotiating with Mr. Miller for these lands prior to the conveyance to Horn and Weaver?

A. I cannot recollect; may be two or three months.

Cross X 13. Had you not commenced to negotiate for them at the time you received the written assignment filed as "Exhibit A?"

A. I think so.

Cross X 14. State if it is not true that the negotiations for these lands were in progress for some months before all the terms were agreed upon, and before title was made satisfactory?

A. Yes.

Cross X 15. What interest, if any, had you at the time at the National Bank of Catasauqua, and what relation did you hold towards it?

A. I was stockholder in the National Bank of Catasauqua, and was president of the bank.

Cross X 16. In the transfer of this deed of trust did you provide for your interest in the bank or for your interest in the $3,000 indebtedness due Horn, Seager and Weaver from William Miller as rents on the Ramsey farm, as mentioned in your former deposition? [Objected to by respondents' counsel for the reason that the writing itself is the best evidence of the fact, and the further fact that his former depositions does not touch upon that.]

A. In the transfer of the deed of trust to me by Mrs. Miller I provided only for the $12,000 which Miller really owed me.

Cross X 17. At the time you received this first assignment did you not reject it for the reason that you considered it insufficient?

A. It was afterwards considered by the attorneys that a new one had better be made and spread upon the records, which was done January 3d, 1876.

Cross X 18. At what place did you see William Miller at the time he agreed to give you the deed of trust?

A. I saw him once at the Cosmopolitan Hotel, in New York, and at Allentown or Catasauqua, Pennsylvania,—which of the two I am not sure.

Cross X 19. Were you present when the first transfer was made to me, and where was it made?

A. It was made at Kenton, or in the office of Judge Meat, in Ohio. I was not present. Horn and Weaver were acting as my agents in that respect. But I had made the arrangements with Mr. and Mrs. Miller, at Kenton, before.

Cross X 20. How did Horn and Weaver, at that time, happen to be acting as your agents? Were they not taking the assignment as part of the transaction for the purchase of the entire lands, and acting for themselves as well as for you? [Objected to by respondents' counsel for the reason that the writing relating thereto is the best evidence.]

A. First, Mr. Horn is cashier of the bank, and I am president. We could not both leave here. They went out to purchase these lands to secure their own and the bank's debt. They then, if I understood it right, made an arrangement with Miller to purchase the lands subject to this deed of trust.

Cross X 21. Had not William Miller refused to make this assignment to you except upon condition to sell the entire lands? [Objected to by respondents' counsel for the reason that the assignment was made by Mary Miller instead of William Miller.]

A. Mr. Miller was anxious to sell his lands, and, if I recollect properly, when I was at Kenton they had agreed to give me the deed of trust, and were all anxious to secure their claims against Miller. I came home and the matter was talked over, and they went out and bought the land, as stated before. I don't know that any such condition as wanting to sell the whole was imposed.

Cross X 22. Did you visit Mr. Miller at Kenton solely for the purpose of securing your own claims, or did you go to secure yourself, the bank and Messrs. Horn and Weever?

A. I know that I went there principally to secure my own claims, and may have thought about securing the other claims, but I cannot now definitely state.

Cross X 23. Did you, at the time of your visit to Kenton, Ohio, have an accounting with Mr. Miller as to what he owed you, and if so, did he then, or at any other time, give you any note or memorandum indicating the amount of his indebtedness to you?

A. Our entire business was upon notes which I had endorsed for him and afterwards paid, and he knew the exact amount as well as I did, and I cannot say whether I had the notes with me or not; perhaps some of them.

Cross X 24. Can you give the names of the payees and the amounts of each of the several papers so endorsed by you?

A. I think I can't answer more fully than I did before.

Cross X 25. State whether any part of these notes were for the Jay Cooke note mentioned in your former deposition, or any part of it?

A. They were not for any part of the Jay Cooke note, nor for the Penn Mutual Life Insurance Company.

Cross X 26. The first assignment recites that it is made to you in consideration of twenty thousand one hundred dollars; why was it made for such a large amount if you only had $12,000 involved?

A. I don't know why the consideration was made so much larger than my claim, which was only $12,000.

Cross X 27. You stated in your former deposition that your purchase at the sheriff's sale, made under deed of trust in question, was not antagonistic to the interest of the other parties interested in said lands. Do you mean now to claim that your holding under said purchase is for your own benefit or simply that you hold for yourself and the others, but that you are entitled to receive from the proceeds of said lands the first $12,000, the balance to be distributed *pro rata* among all parties interested? [Objected to because there is no such statement in the former depositions as that contained in the question.]

A. If I did say so in my former depositions I suppose I had reference to the fact that having agreed to take a portion of the lands with the others I would do them justice. If we sold the land at a loss I might do better than to insist upon the whole of the $12,000.

Cross X 28. At the time that you purchased the land at the sheriff's *land* under the deed of trust, did you purchase solely on your own account or for the benefit of all the respondents now in the case? [Objected by respondents counsel for the reason that the records and evidence already in, show that W. B. Powell & Son were not known in the transaction until after that time.]

A. Being the owner of the deed of trust I bought the land in my name, expecting afterwards to convey according to the interests held by others which I have not done yet.

Cross X 29. State who receives the rents and profits of these lands, and furnishes the necessary expenses for maintenance? Yourself alone or all the parties interested?

A. E. F. Powell, now residing on the place, receives all the rents and proceeds of the farm and pays it out. It has been, after making the improvements, a losing concern, so far as I have been able to get the figures or the accounts.

Cross X 30. Does he account any more to you than to the other parties interested?

A. He does not.

Cross X 31. At the time of the purchase from William and Mary Miller, how much cash, if any, was paid direct to them on the lands?

A. I don't know. There were other liens which Mr. Horn paid off, and I don't know how much money was paid direct to them; and I think Mr. Horn stated the matter freely in his depositions.

Cross X 32. What was William Miller's financial condition at the time you were endeavoring to consummate the purchase of these lands?

A. I considered his condition good if his projects that he was in held out.

Cross X 33. What do you mean by his projects?

A. He was largely engaged in contracting.

Cross X 34. State whether or not he was much involved in debt, or had many dangerous contracts on hands?

A. From the knowledge I had then I could not say whether he was in debt or not outside of what he owed me, and I didn't consider that he had dangerous contracts. But the failure of Jay Cooke and the change of the times, it was thought advisable to secure claims he owed me and others.

Cross X 35. What was William Miller's financial condition about the time he removed from Catasauqua, and when was it that he left this place?

A. Miller's financial condition when he left here was good. He left here to work on the Union & Pacific R. R.—I can't give the time; and Miller said he made a good deal of money on the U. & P. R. R.

Cross X 36. State if you remember about the time when John W. Koontz and wife sold a house and lot in Catasauqua, Pennsylvania, to Mary Miller, mentioned in Mr. Horn's former depositions; and if you do, was it before or after he removed from Catasauqua?

A. I don't know.

Cross X 37. What is Mr. Miller's present financial condition? [Question and answer objected to by respondent as being irrelevant.]

A. I understand that it is not good; only know this from what I have heard.

Cross X 38. Did you ever pay any part of the Jay Cooke note mentioned in your former depositions, and if so, how much of it?

A. I paid and caused to be paid the whole of it—$25,000, with its interest; that is, it was all paid out of the effects of Mrs. Mary Miller except, I think, about $5,000.

Cross X 39. At what time did you make the payment?

A. I think the main payment were made through the bank. About one-half of it was paid when the note was due; the balance was obtained by loan from the Penn Mutual Life Insurance Company, on property of Mrs. Mary Miller. The property was afterwards sold and the proceeds applied to the payment of that debt. This my recollection of it. I am speaking without the exact figures.

Cross X 40. Did you pay any portion of it from your own private means prior to being reimbursed by Mr. Miller?

A. I do not think so.

Cross X 41. How long this Jay Cooke note to run from its date?

A. I can't say, but suppose the usual commercial time of sixty or ninety days.

Cross X 42. How long after you endorsed the Cooke note before the deed of trust on lands in Atchison county, Missouri, and the mortgage on Catasauqua property, mentioned in your former deposition, were executed to secure you by making such endorsement? [Objected to for the reason that the trust deed and mortgage are the best evidence, by respondents' counsel.]

A. That in my opinion the mortgage and deed of trust and note to Jay Cooke were executed about the same time, and if I said in my former testimony that the note was made in December, 1870, I must have been mistaken as to date, and it was probably in September, 1871.

Cross X 43. In what manner was the first half of the note paid? Was it all paid by the time that the Penn Mutual loan was negotiated?

A. I believe that after the negotiation of the Penn Mutual loan the Jay Cooke & Co.'s note was all paid.

Cross X 44. Did you obtain possession of the note at the time of its final payment?

A. I don't now recollect.

Cross X 45. In what year did Jay Cooke & Co. fail?

A. September, 1873.

Cross X 46. When you speak of the note being paid from the proceeds of Mrs. Miller's property, what property do you refer to?

A. Especially that which was included in the mortgage. One of them was called the Bridge-street lot. And all her Catasauqua property, and, I believe, a part of the proceeds of the sale of the Ramsey property. I can't go into the full particulars. I could hunt it up, I suppose.

Cross X 47. Could the Jay Cooke & Co. note run for more than a year after its maturity before it was paid?

A. It could, but I don't believe that it did. Upon reflection, I am satisfied a portion of it held over for some time.

Cross X 48. State whether Mary Miller signed in person the mortgage to you on her Catasaqua property?

A. I don't know.

Cross X 49. Have you not the original mortgage among your papers? If so, would you not attach it as an exhibit?

A. I here produce the original mortgage and marked "Exhibit E," which shows that the date of December, 1870, given in my original deposition was correct, and that of September, 1871, hereinbefore mentioned, is not correct, or may have been renewals.

Cross X 50. How did it happen that you afterwards took a deed of trust on the lands in Missouri from William Miller, 1871, to secure this Cooke loan?

A. I suppose I took it as additional security.

Cross X 51. Why was it not taken at the time you became Mr. Miller's endorser as you now say 1870?

A. I don't know; I can only say that after Miller did not pay according to promise, I asked for additional security and received the deed of trust on western lands.

Cross X 52. Are you sure that the whole $2,500 was borrowed at the same time?

A. I am.

Cross X 53. For what purpose did he borrow this money?

A. I answer the same as I did in my former deposition.

Cross X 54. State if you know whether Mrs. Miller's lands in Catasauqua were at that time in the market for sale (at the time of the Cooke loan)?

A. I don't know.

Cross X 55. Have you not in your possession a paper, purporting to be a power of attorney from Mary Miller to William Miller, authorizing a sale of her Catasauqua lands, dated about December 19, 1870?

A. I have such power in my hands just now; but I have recollection about it at all. The original is hereto annexed and marked "Exhibit F."

Cross X 56. State if at the time of negotiating this Cooke loan, Mr. Miller did not inform you that he desired the money to pay in part upon a farm Mrs. Miller had recently purchased in Missouri, or if he so stated to you at any time?

A. I have no doubt Mr. Miller told me what he wanted the money for, and my impression that a large portion of it must pay a Mr. Wood who had a lien upon this Miller farm, and I don't recollect anything of his buying for her.

Cross X 57. State whether you heard William Miller, about the time of negotiating this loan, say anything about selling his Omaha property; and if so, what was done with the proceeds thereof?

A. I don't recollect about his ever saying anything to me about his selling his Omaha property.

ELI J. SEAGER.

Sworn and subscribed before me on the day at the place and within the hours first aforesaid.

[SEAL.] R. Clay Hammersley, Notary Public.

Exhibit A.

Whereas, the undersigned William Miller, is indebted to the undersigned Mary Miller, in the sum of sixteen thousand dollars, with interest thereon, from the 25th day of June, A. D., 1871, to be computed according to the laws of the State of Missouri; and whereas, on the 10th day of November, A. D. 1873, the said William Miller and Mary Miller executed and delivered to one

William L. Patterson, of Whiteside County, State of Illinois, a deed, conveying to him the lands hereinafter described in trust, to secure the payment of the said indebtedness, which matured on the 25th day of June, A. D. 1876. Now therefore, in consideration of twenty thousand one hundred dollars, to the said Mary Miller paid and secured to be paid by Eli J. Seager, of Lehigh county, State of Pennsylvania, the said William Miller and the said Mary Miller, for and in behalf of the said Mary Miller, do hereby sell and assign and transfer unto the said Eli J. Seager the deed of trust aforesaid and all the interest of the said Mary Miller therein, and the indebtedness secured thereby, and do also bargain, sell and convey unto the said Eli J. Seager, all the interest of the said Mary Miller in the lands hereinafter described, and all the interest and estate of the said William Miller therein, to the extent of satisfying said deed of trust and no more, it being hereby intended to assign and transfer to the said Seager the said deed of trust and the indebtedness secured thereby, and whatever interest and estate in said land may be necessary to effectuate said transfer and to secure the payment of said indebtedness and make the said deed of trust as good and effectual in law to the said Eli J. Seager as the same now is to and for the said Mary Miller.

And we do authorize and direct the said William L. Patterson to execute and perform for the said Seager all and singular the powers and duties which by the said deed of trust he is required to do and perform for the said Mary Miller.

The lands here referred to are described as follows, situate, lying and being in the county of Atchison, and State of Missouri, to-wit: The northwest quarter of the southeast quarter and the west half of the southwest quarter of section eighteen, the south half of section nineteen and the west half of the northwest quarter of section nineteen, the southeast quarter of the southwest quarter of section twenty-eight, in township sixty-six, range thirty-eight, west. Also the east half of the northeast quarter and the northwest quarter of the northeast quarter of section twenty-four, aud the east half of the northeast quarter, the southwest quarter of the northwest quarter, the north half of the southeast quarter and the southwest quarter of the southeast quarter of section twenty-five, in township sixty-six, range thirty-nine, west; said tract containing in all one thousand and eighty acres, more or less.

And the said Eli J. Seager is hereby authorized and empowered to control the said deed of trust as absolutely as the said Mary Miller might, and to receive and receipt for the money and indebtedness secured thereby, and to have and to hold the same and the interest and estate of these grantors in the said lands to the extent necessary to the making good the said deed of trust to himself, his heirs and assigns forever.

In testimony whereof we have hereto set our hands and seals, this 6th day of October, A. D. 1875.

WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Signed, sealed and delivered in our presence.

JAMES WALKER.
R. H. BROWN.

Acknowledged October 6th, A. D. 1875.

EXHBIT B.

Sheriff's Deed Under Trust-Deed Sale.

Whereas, William Miller and Mary Miller, his wife, by their deed of trust dated the 10th day of November, A. D. 1873, and recorded in the recorder's office in Atchison county, Missouri, in book 8, page 41, conveyed to William L. Patterson, as trustee, the property hereinafter described, in trust, to secure to Mary Miller the payment of the indebtedness in said deed described; and whereas, it is provided in and by the terms of said deed of trust that in a certain contingency, therein stated, the acting sheriff of Atchison county, Missouri, in case of the absence from the State of Missouri, death, refusal to act, or disability in anywise, of the above-mentioned William L. Patterson, trustee, may act in lieu of and perform the duties and powers delegated to the said trustee in and by the terms of said deed; and whereas, William L. Patterson, the said srustee, was, at the time the *cestui que trust* and assignee of said indebtedness, desired to sell, and at the time default was made in the payment of said indebtedness, absent from the State of Missouri.

And whereas, default was made in the payment of said indebtedness—to-wit, the sum of sixteen thousand dollars and interest, secured by said deed—by reason whereof I, Henry Warneke, sheriff of Atchison county, in the State of Missouri, acting as trustee, and in the place and stead of the said trustee appointed in and by said deed, in accordance with the terms of said deed, did, at the request of the legal holder of said indebtedness, proceed to execute the powers to me given by said deed, and did, on Saturday, the 16th day of September, A. D. one thousand eight hundred and seventy-six, having previously given sixty days' notice of the time, terms and place of sale, and of the property to be sold, by advertisement printed in the Atchison County Journal, a newspaper printed and published in the town of Rock Port, county ot Atchison, and State of Missouri, a copy of which advertisement, with the affidavit of the printer of said newspaper, proving its publication, is hereto annexed and made part hereof, at the court house door in the town of Rock Port, Atchison county, Missouri, aforesaid, expose to sale for cash, to the highest bidder, at public auction, the said property and real estate hereinafter described; and at said sale Eli J. Seager, being the highest and best bidder, for the sum of seven thousand nine hundred and twenty dollars, the same was struck off and sold to him at that price and sum.

Now, therefore, know all men by these presents, that I, Henry Warneke, sheriff of Atchison County, Missouri, as trustee as aforesaid, in consideration of the premises and of the sum of seven thousand nine hundred and twenty (7,920) dollars, to me paid by the said Eli J. Seager, of the county of Lehigh and State of Pennsylvania, do bargain, sell and convey unto him, the said Eli J. Seager, the real estate in said deed of trust described as follows, to wit: The northwest fourth of the southeast quarter and the west half of the southwest quarter of section No. (18) eighteen; the west half of the northwest quarter and the south half of section No. (19) nineteen, all in township No. (66) sixty-six, range No. (38) thirty-eight; also the southeast fourth of the southwest quarter of section No. (28) twenty-eight, in township No. (66) sixty-six, of range No. (38) thirty-eight; the east half of the northeast quarter and the northwest fourth of the northeast quarter of section No. (24) twenty-four; the east half of the northeast quarter and the northeast fourth of the southeast quarter and the west half of the southeast quarter and the northwest fourth of the northwest quarter of section (25) twenty-five. All of said lands in sections 24 and 25 are situated in township No. (66) sixty-six, of range No. (39) thirty-nine, W. 5th P. M. To have and to hold the same unto the said Eli J. Seager, his heirs and assigns forever.

In witness whereof, I, the said Henry Warneke, sheriff of Atchison county, Missouri, as trustee, as aforesaid, have hereunto set my hand and seal on this 20th day of September, A. D. 1876.

HENRY WARNEKE, [SEAL.]
Sheriff Atchison County, Mo.

The words "of the northeast half" were erased before signature.
M. McKILLOP, Notary Public.

Acknowledged September 20th, 1876.

Recorded September 21st, 1876. Book number 24, at pages number 448, 449, 450 and 451.

STATE OF MISSOURI, } ss.
County of Atchison. }

A. B. McCREARY, being sworn, says he is one of the publishers of "The Atchison County Journal, published at Rock Port, in the county aforesaid, and that a notice of which the annexed is a true copy, was published in said paper for 10 weeks, according to to law, according to the following dates:

1st time, No. 47, July 15, 1876.
2d " " 48, " 22, 1876.
3d " " 49, " 29.
4th " " 50, Aug. 5.
5th " " 51, " 12.
6th " " 52, " 19.
7th " " 1, " 26.
8th " " 2, Sept. 2.
9th " " 3, " 9.
10th " " 4, " 16.

A. B. McCREARY.

Subscribed and sworn to before me, this 20th day of September, 1876. My commission is dated February 24th, 1873, and expires February 24th, 1877.

Witness my hand and notarial seal.

JOHN D. DOPF, Notary Public.

Here follows printed "Trustee's Sale," which is same as appears in "Exhibit P," to the deposition of John P. Lewis, heretofore copied.

EXHIBIT D.

This deed, made and entered into this 10th day of November, A. D. 1873, by and between William Miller and Mary Miller, his wife, of the county of Buchanan, and State of Missouri, parties of the first part, William L. Patterson, of Whiteside county, State of Illinois, party of the second part, and Mary Miller, wife of William Miller aforesaid, party of the third part, witnesseth: That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, the following-described real estate, situate, lying and being in the county of Atchison, and State of Missouri, to-wit: The northwest quarter of the southeast quarter and the west half of the southwest quarter of section eighteen, the south half of section nineteen, and the west half of the northwest quarter of section nineteen, the southeast quarter of the southwest quarter of section twenty-eight, in township sixty-six, range thirty-eight, west. Also, the east half of the northeast quarter and the northwest quarter of the northeast quarter of section twenty-four, and the east half of the northeast quarter, the northwest quarter of the northwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section twenty-five, in township sixty-six, range thirty-nine west, said tract containing in all one thousand and eighty acres more or less.

To have and to hold the same, with the appurtenances, to the party of the second part and to his ——— heirs and assigns forever.

In trust, however, for the following purposes: Whereas, said William Miller, one of the said parties of the first part, is indebted to the said Mary Miller, the party of the third part, in the sum of sixteen thousand dollars, together with interest thereon from the twenty-fifth day of June, A. D. 1871, being the sum realized and received by said William Miller from the sale of the individual property of said Mary Miller, and used by him in the payment for the real estate hereinbefore mentioned and described, and to secure the indebtedness of said William Miller on account thereof, which said sum of sixteen thousand dollars, with the interest thereon, is due and payable on the twenty-fifth day of June, A. D. 1876.

Now if the said debt or sum of sixteen thousand dollars, and interest thereon, shall be well and truly paid when the same becomes due and payable, the deed shall be void and the property hereinbefore conveyed shall be released at the cost of the said William Miller, one of the parties of the first part. But if the said debt or sum, and interest, shall not be well and truly paid when the same becomes due and payable, then this deed shall remain in force, and the said party of the second part, or his legal representatives, or in case of his death or absence from the State, the sheriff of the county of Atchison, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at the court house door in the town of Rock Port, county of Atchison, for cash, first giving sixty days' public notice of the time, terms and place of said sale, and of the property to be sold, by advertisement in some newspaper printed in said county; and upon such sale shall execute and deliver a deed in fee simple of the property sold, to the purchaser or purchasers thereof, and receive the proceeds of said sale, out of which he shall pay—first, the cost and expenses of this trust, and next the said debt or sum of sixteen thousand dollars and interest thereon, and the remainder, if any, shall be paid to the said William Miller or his legal representatives; and said party of the second part covenant faithfully to perform and fulfill the trust herein created.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.
WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Signed, sealed and delivered in presence of us, as to William Miller: W. M. RHODES. J. DEINE.

J. W. ZEHNER, ELIZA ZEHNER, as to signature of Mary Miller.

Acknowledged November 10th, 1873.

Recorded February 7th, 1874, Book 8, page 41.

EXHIBIT C.

I, Mary Miller, and William Miller her husband, do hereby, for and in consideration of the sum of twelve thousand dollars, assign, transfer and set over to Eli J. Seager the within deed of trust and all interest in the debt secured thereby.

This 3d day of January, 1876.

MARY MILLER.
WILLIAM MILLER.

Witnesses: M. MCKILLOP.
S. S. HUGHES.

"EXHIBIT E."

This Indenture, made the fourteenth day of December, in the year of our Lord, one thousand eight hundred and seventy, between Mary Miller, of Omaha, in the State of Nebraska, by her attorney in fact, William Miller, (by letter of attorney, dated 21st of November, A. D. 1870), and William Miller for himself, of the same place, of the one part, and Eli J. Seager, of Allentown, in the county of Lehigh, and State of Pennsylvania, of the other part. Whereas, the said Mary Miller and William Miller, in and by a certain obligation or writing obligatory, under their hands and seals duly executed, bearing even date herewith, stand bound unto the said Eli J. Seager in the sum of twenty thousand dollars, conditioned for the payment of ten thousand dollars in six months after and from the date hereof, with legal interest for the same, without any fraud or further delays, as in and by the said recited obligation, and the condition thereof, relation being thereunto had, may more fully and at large appear. Now this Indenture witnesseth that the said Mary Miller and William Miller, as well for and in consideration of the aforesaid debt or sum of ten thousand dollars, and for the better securing the payment of the same with interest, unto said Eli. J. Seager, his executors, administrators and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar, unto them in hand well and truly paid paid by the said Eli J. Seager, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said Eli J. Seager, his heirs and assigns, all those two certain lots or pieces of ground situate in the borough of Catasauqua, in the county of Lehigh, and State of Pennsylvania, bounded and described as follows, to-wit: No. one, beginning at a post the corner of Bridge street and Third street, thence along said Third street N. 43½ W., sixty feet to a corner; thence by other lands of the said Mary Miller N. 46½ degrees E. one hundred and eighty feet to Church alley; thence along said alley S. 43½ degrees E. one hundred and eight feet to Bridge street; thence along said Bridge street S. 61½ W. one hundred and eighty-six feet to place of beginning. (It being the same premises which M. H. Horn and wife, by indenture dated the 26th day of February, A. D. 1866, for the consideration therein mentioned, granted and confirmed unto the said Mary Miller, her heirs and assigns forever, recorded in the office for the recording of deeds, at Allentown, in and for the county of Lehigh, in deed book vol. 37, page 108, etc.)

And No. two, those two certain contiguous lots or pieces of ground situate on Second street, in the borough of Catasauqua aforesaid, "the first" of which is bounded and described as follows, to-wit: Beginning at a corner of lot "the second," hereinafter described, and Second street; thence along said Second street W. 45 degrees W. fifty-three feet, more or less, to lands now or late of Bernhard Eich; thence along said lands S. 45 degrees, W. one hundred and eighty-eight feet, more or less, to a twenty-feet-wide alley; thence along said alley S. 45 degrees E. fifty-three feet more or less, to said lot "the second;" and thence by the same N. 45 degrees E. one hundred and eighty-eight feet, more or less, to the place of beginning. The second, beginning at corner of lot "the first," hereinbefore described, and Second street; thence along said lot "the first" S. 45 degrees W. one hundred and eighty-two feet, more or less, to a twenty-feet-wide alley; thence along said alley S. 45 degrees E. twenty-three feet to land of John Hudders; thence along the same W. 45 degrees E. one hundred and eighty-two feet more or less, to said Second street, and thence along the same W. 45 degrees W. twenty-three feet to the place of beginning. (It being the same premises which John W. Koons and Sabina, his wife, by indenture dated the 1st day of April, A. D. 1868, for the consideration therein mentioned, granted and confirmed unto the said Mary Miller, her heirs and assigns forever, recorded in the office for the recording of deeds, at Allentown, in and for the county of Lehigh, in deed book vol. 37, page 110, etc., reference, etc.)

Together with all and singular buildings, improvements, ways, waters, water courses, rights, liberties, privileges, improvements, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; to have and to hold the said above described lots or pieces of ground, hereditaments and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said Eli J. Seager, his heirs and assigns, to the only proper use and behoof of the said Eli J. Seager, his heirs and assigns forever. Provided always, nevertheless, that if the said Mary Miller and William Miller, their heirs, executors, administrators or assigns do and shall well and truly pay, or cause to be paid, unto the said Eli J. Seager, his executors, administrators or assigns, the aforesaid debt or sum of ten thousand dollars, on the day and time hereinbefore mentioned and appointed for payment of the same, together with lawful interest as aforesaid, without any fraud or further delay, and without any deduction, defalcation or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever, that then and from thenceforth, as well this present indenture and the estate hereby granted as the said recited obligation shall cease, determine and become void, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

In witness whereof the said parties to these presents have interchangeably set their hands and seals hereunto.

Dated the day and year first above written.

MARY MILLER, [SEAL.]
By her attorney in fact, WILLIAM MILLER, [SEAL.]
WILLIAM MILLER. [SEAL.]

Sealed and delivered in the presence of us:
R. CLAY HAMMERSLY.

Acknowledged December 14th, 1870.
Recorded December 19th, 1870.
Mortgage book vol. 15, page 194.

LETTER OF ATTORNEY.

Know all men by these presents, that I, Mary Miller, have made, constituted and appointed, and, by these presents, do make, constitute and appoint, William Miller my true and lawful attorney, for me, and in my name, place and stead, to bargain, sell and convey, to such person or persons and for such price or prices, and upon such terms of credit or otherwise as my said attorney may see fit, all or any portion of the following-described real estate, situate in the county of Lehigh, and State of Pennsylvania, to-wit: One house and lot on Second street, adjoining lot owned by John Hudders; also one lot fronting on Bridge street, Third street and Church alley, in the town of Catasauqua; and in my name to make, execute, acknowledge and deliver such deed or deeds, either with or without covenants of warranty, as may be necessary absolutely to convey to the purchaser or purchasers thereof my right, title, interest, dower, claim or demand whatsoever of, in or to the premises above mentioned and described, giving and granting unto my said attorney full power and authority to do and perform every act and thing requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present; with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute may lawfully do in virtue hereof.

Signed this nineteenth day of December, A. D. one thousand eight hundred and seventy, in presence of Byron Reed.

MARY MILLER.

Acknowledged December 19th, 1870.

V. W. Weaver, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Question 1. What is your name, age, and place of residence?

Answer. Valentine W. Weaver; aged fifty-four years; and place of residence Coplay, Lehigh county, Pennsylvania.

Q. 2. Are you one of the defendants in a suit now pending in the circuit court of the United States for the western district of Missouri, western division thereof, in which Henry Bean and John W. Alsop are complainants, and W. L. Patterson, William Miller, Eli J. Seager *et al.* are respondents?

A. Yes.

Q. 3. Are you the Valentine W. Weaver, in connection with M. H. Horn, who purchased from William Miller, about the year 1876, a tract of land in Atchison county, Missouri, of about one thousand and eighty acres, more or less?

A. Yes, except as to date. I do not remember the date.

Q. 4. At the time of your purchase of said land, were you or were you not aware of the fact that prior to said time a deed of trust upon said lands, for the benefit of Mary Miller, wife of William Miller, had been assigned to Eli J. Seager to secure him in the payment of about twelve thousand dollars due him from William Miller? [Objected to for the reason that the question is leading, and assumes that such an assignment had in fact been made.]

A. Yes, sir.

Q. 5. Was or was not your purchase of said lands subject to said debt and deed of trust of William Miller assigned to Eli J. Seager?

A. Yes, sir.

Q. 6. At the time of your purchase were you aware of the fact that William Miller was financially embarrassed and in failing circumstances? [Objected to as leading.]

A. I was not.

Q. 7. At the time of your purchase of said lands did you know whether or not William Miller was indebted to Bean and Alsop or had any contract with them?

A. No, sir. I don't remember of hearing anything of it.

Q. 8. Please state whether you purchased said lands in good faith to secure an indebtedness to you from William Miller, or whether you purchased the same to aid said William Miller in hindering, delaying or defrauding his creditors? [Objected to for the reason that the question of good faith is to be determined by the court.]

A. Yes and no, sir.

CROSS-EXAMINATION.

Cross 1. Who of the parties interested in the purchase of these lands, if anyone, has had the principal charge and control of the purchase, and management, since?

A. My friend Col. M. H. Horn has attended to all matters for me.

Cross 2. At what time did you in first place commence negotiations for these lands, and how long were your negotiations in progress before the purchase was finally completed?

A. I don't remember. I am very poor at keeping dates. I don't remember it. I went out there and found the title incorrect, and came back without consummating the trade, and at a subsequent time it was completed.

Cross 3. State whether you ever visited Mr. Miller at Kenton, Ohio. in connection with this purchase. If so, who went with you; at whose instance and for whose benefit did you go, and what was done toward making the trade while there?

A. I did visit Mr. Miller at Kenton, Ohio, in connection with this purchase. Col. M. H. Horn went with me. Went for my own benefit. I don't remember that there was anything done at Kenton. We went from there to Rock Port, and found the title not good, and there the fuss first commenced.

Cross 4. State whether the terms of the proposed purchase were talked over between Mr. Miller and yourself at this trip.

A. Not to my recollection. I think the terms were pretty well agreed on our part before we left. I so understood from Mr. Horn.

Cross 5. What were the terms upon which this purchase was to be made, and what were the terms upon which it was finally consummated?

A. I don't remember the terms in either case.

Cross 6. What interest did you acquire as your share in this purchase, and how was it paid for?

A. I have a half interest in the purchase, and part of the purchase money was for an old debt that Miller owed me, and the balance was paid in cash to Col. M. H. Horn to take care of my interest, and the respective amounts I can't now remember.

Cross 7. State whether or not the National Bank of Catasauqua and Messrs. W. B. Powell & Son are not also interested in those lands.

A. If I remember right, they came in afterwards.

Cross 8. After you made your trip to Missouri, or after the conveyance to Mr. Horn and yourself?

A. I think it was after we had been to Missouri.

Cross 9. Did not a considerable part of the consideration paid for these lands arise out of debts due to the Bank, and due to Horn, Seager and Weaver?

A. Yes, it did.

Cross 10. Did you then repay to them the one-half of these claims?

A. I paid my share of it. I don't remember what proportion it was.

Cross 11. Did you, including the amounts which Miller owed you, pay as much as eighteen thousand two hundred dollars?

A. That I can't remember. I don't know what the consideration was any more.

Cross 12. Can you approximate within five thousand dollars of the amount of cash paid by you?

A. No, sir, I could not.

Cross 13. What means have you of knowing that your purchase was made subject to the trust deed which you say was assigned by Miller and wife to Mr. Seager.

A. I gained my information from Mr. Horn; from my recollection, I never seen it.

Cross 14. State whether, at the time of your purchase, it was understood that you were only buying the land subject to this deed of trust, or did you understand that you were purchasing for all the parties interested, including Mr. Seager.

A. I understood that we were purchasing subject to that deed of trust. Mr. Horn and the bank were intended to be taken care of or taken in. I don't remember anything being said about Mr. Seager.

Cross 15. Did you ever, at any time, pay any money on these lands direct to Mr. or Mary Miller, or any one else for them?

A. No, sir.

Cross 16. At the time of your visit to Kenton, Ohio, and from that to Missouri, were any papers whatever made by Mr. Miller and wife, or either of them, to any of the parties now interested in said lands? If so, what was it and to whom made?

A. It seems to me there was something, but I don't know whether it was signed, or what it purported to be. I don't remember any more.

Cross 17. What portion, if any, did you pay on the purchase of the one hundred and sixty acres of these lands sold in September, 1879, at sheriff's sale, at $3,500, and bid in by Horn and yourself?

A. I don't remember. Mr. Horn paid it and charged it to my account.

Cross 18. Have you any interest in the National Bank of Catasauqua, as stockholder or otherwise?

A. I am a stockholder and director.

Cross 19. State whether you ever purchased any other lands in Missouri of William and Mary Miller, or either of them, and if so, who were interested in the purchase, who made the trade, and how was the purchase price paid?

A. I was interested in the Ramsey farm, but I don't remember the amount of my interest therein. I don't remember how we came to buy it.

Cross 20. State whether or not this whole business has not been so completely in the control of other parties, that you have no definite recollections or ideas about the business transactions that have been connected therewith.

A. Yes, sir. V. W. WEAVER.

Sworn and subscribed before me, on the day, at the place and within the hours first aforesaid.

[SEAL.] R. CLAY HAMMERSLEY, Notary Public.

The following papers were produced by plaintiffs, to-wit:

I.

This deed, made and entered into this sixth day of April, eighteen hundred and sixty-nine, by and between Catherine M. Boardman and George W. Boardman, her husband, of Cooper county, Missouri, parties of the first part, and James Wood and William Miller, of Atchison county, Missouri, parties of the second part, witnesseth: that the said party of the first part, for and in consideration of one hundred and twenty dollars to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said parties of the second part, the following-described tract or parcels of land, situate in the county of Atchison, in the State of Missouri, to-wit; The southwest quarter of the southeast quarter of section twenty-five (25), in township sixty-six (66), of range thirty-nine (39), containing forty acres (40) according to United survey; to have and to hold the same, together with all the rights, immunities, privileges and appurtenances to the same belonging or in anywise appertaining, unto the said parties of the second part and to their heirs and assigns forever; the said Catherine M. Boardman hereby covenanting that she and her heirs, executors and administrators shall and will warrant and defend the title to the said premises to the said parties of the second part and to their heirs and assigns forever, against the lawful claims of all persons.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written. CATHERINE W. BOARDMAN. [SEAL.]
GEORGE W. BOARDMAN. [SEAL.]

Acknowledged April 6th, 1869.
Filed for record April 24th, 1869.

II.

This indenture, made this seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, between Russell Hinckley and Jane T., his wife, of the city of Bellville, county of St. Clair, and State of Illinois, of the first part, and James Wood, of the second part, witnesseth: that the said party of the first part, for and in consideration of the sum of sixteen hundred and eighty dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and, by these presents, do grant, bargain and sell, unto the said party of the second part, his heirs and assigns, all the following-described lots or pieces or parcels of land, situated in the county of Atchison, and State of Missouri, to-wit: The southwest quarter of section nineteen, in township sixty-six, of range thirty-eight; also the the northeast quarter of the southeast quarter and the west half of the southeast quarter of section nineteen, in township sixty-six, of range thirty-eight, containing two hundred and eighty acres, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

And the said Russell Hinckley and Jane T., his wife, party of the first part, hereby expressly waive, release and relinquish unto the said party of the second part, his heirs, executors, administrators and assigns, all right, title, claim, interest and demand benefit whatever, in and to the above described premises, and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads, and the said Russell Hinckley and Jane T., party of the first part, for their heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above conveyed, as a good, sure, perfect, absolute and indefeasible estate of inheritance in law in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year above written.

RUSSELL HINCKLEY. [SEAL.]
JANE T. HINCKLEY. [SEAL.]

Signed, sealed and delivered in presence of us:

GEO. KELLEY,
HENRY DAVIS.

Acknowledged June 17th, 1868.

Filed for record July 20th, 1868. Book 12, page 465.

III.

WARRANTY DEED.

George R. Ramsey and wife to James Wood and William Miller.

This indenture, made on the 20th day of July, A. D. one thousand eight hundred and sixty-eight, by and between George R. Ramsey and Hester Ann Ramsey, his wife, of Atchison county, Missouri, parties of the first part, and James Wood and William Miller, of the county of Atchison, in the State of Missouri, parties of the second part, witnesseth that said parties of the first part, in consideration of the sum of four hundred dollars, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All of the southeast quarter of the southeast quarter of section No. nineteen (19), in township sixty-six, of range thirty-eight.

To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in any wise appertaining, unto the said parties of the second part, and unto their heirs and assigns forever; the said parties of the first part hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by them or those under whom they claim; and that they will warrant and defend the title to the said premises unto the said parties of the second part, and to their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.
G. R. RAMSEY, [SEAL.]
her
HESTER ANN ✕ RAMSEY. [SEAL.]
mark.

Signed, sealed and delivered in presence of us:
Stamp, 50 cents.
Acknowledged July 20th, 1868.
Filed for record July 20th, 1868. Book 11, page 173.

IV.

WARRANTY DEED.

Henry S. Pedigo and wife to James Wood and William Miller.

This indenture, made on the 28th day of July, A. D. one thousand eight hundred and sixty-eight, by and between Henry S. Pedigo and Mary A. Pedigo, his wife, of Atchison county, Missouri, parties of the first part, and James Wood and William Miller, of the county of Atchison, in the State of Missouri, parties of the second part, witnesseth; that said parties of the first part, in consideration of the sum of three hundred and twenty-five dollars, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All of the northwest fourth of the northwest quarter of section 25, township No. 66, of range No. 39, containing forty acres, more or less. To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in any wise appertaining, unto the said parties of the second part, and unto their heirs and assigns forever; the said parties of the first part hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by them, or those under whom they claim; and that they will warrant and defend the title to the said premises unto the said parties of the second part, and to their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.
HENRY S. PEDIGO. [SEAL.]
MARY A. PEDIGO. [SEAL.]

50 cents stamp.
Acknowledged July 28th, 1881.
Filed for record July 28th, 1868.

V.

WARRANTY DEED.

Horatio D. Van Syckle to James Wood.

This identure, made on the ninth day of February, A. D. one thousand eight hundred and sixty-nine, by and between Horatio D. Van Syckle and Emeline Van Syckle, his wife, of the city of New York, in the State of New York, parties of the first part, and James Wood, of the county of Atchison, in the State of Missouri, party of the second part, witnesseth: that said parties of the first part, in consideration of the sum of eight hundred dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All the east half of the northeast quarter and the north half of the southeast quarter of section No. (25) twenty-five, of township No. (66) sixty-six, of range No. (39) thirty-nine, west 5th P. M., containing, according to the established survey, 160 acres, more or less; to have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said parties of the second part and unto his heirs and assigns forever; the said Horatio D.Van Syckle hereby covenanting that he is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that he has good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by him or those under whom he claims, and that he will warrant and defend the title to the said premises unto the said party of the second part, and to his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

HORATIO D. VAN SYCKLE. [SEAL.]
EMELINE VAN SYCKLE. [SEAL.]

Signed, sealed and delivered in presence of us:

HENRY G. GABANY.
J. S. CHICK, as to H. D. Van Syckle.

U. S. revenue stamp, $1.00.

Acknowledged February 9th, 1869.

Filed for record February 17th, 1869, Book 11, page 401.

VI.

WARRANTY DEED.

Henry S. Pedigo to James Wood and Wm. Miller.

This indenture, made on the 19th day of February, A. D. one thousand eight hundred and sixty-nine, by and between Henry S. Pedigo and Mary A. Pedigo, his wife, of the county of Atchison, State of Missouri, parties of the first part, and James Wood and William Miller, of the county of Atchison, in the State of Missouri, parties of the second part, witnesseth: that said part of the first part, in consideration of the sum of three hundred and forty (340) dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following-described lots, tracts or parcels of land, being, lying and situate in the county of Atchison, and State of Missouri, to-wit: All the northwest fourth of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine, W. 5th P. M.; to have and to hold the same, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said parties of the second part and unto their heirs and assigns forever; the said Henry S. Pedigo hereby covenanting that he is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that he has good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by him or those under whom he claim; that he will warrant and defend the title to the said premises unto the said parties of the second part, and to their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

HENRY S. PEDIGO. [SEAL.]
MARY A. PEDIGO. [SEAL.]

Acknowledged February 19th, 1869.

Filed for record February 20th, 1869.

VII.

Know all men by these presents, that Joseph E. Ludlow and Margaret E. Ludlow, his wife, of the county of Buchanan, in the State of Missouri, have this day, for and in consideration of the sum of eleven hundred ($1,100) dollars, to the said Joseph E. Ludlow and Margaret E. Ludlow, in hand paid by James Wood, of the county of Atchison, in the State of Missouri, granted, bargained and sold, and by these presents do grant, bargain and sell unto the said James Wood, the following described tracts or parcels of land, situated in the county of Atchison, in the State of Missouri, that is to say: the southeast ¼ of the northeast quarter section No. 24, township (66), range No. (39), and the northeast ¼ of the southeast ¼ of section No. 24, township 66, range No. 39; also the southwest ¼ of the northwest ¼ section No. 19, township No. 66, range No. 38, containing in all 120 acres more or less. To have and to hold the premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging, or in any wise appertaining, unto the said James Wood, his heirs and assigns forever; they, the said Joseph E. Ludlow, Margaret E. Ludlow, hereby covenanting to and with the said James Wood, his heirs and assigns, for their executors and administrators, to warrant and defend the title to the premises hereby conveyed, against the claims of every person whatsoever.

In testimony whereof, we have hereto subscribed our names and affixed our seals this eleventh day of June, 1869.

JOSEPH E. LUDLOW. [SEAL.]
MARY E. LUDLOW. [SEAL.]

Duly stamped.

Acknowledged June 11th, 1869.

Filed for record July 6th, 1869.

VIII.

This indenture, made this twentieth day of February, one thousand eight hundred and sixty-nine, between Robert Hawke and Elizabeth, his wife, and William E. Dillon and Hannah R., his wife, of Nebraska City, Otoe county, and State of Nebraska, of the first part, and James Wood, of Atchison county, and State of Missouri, and William Miller, of Douglass county, Nebraska, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of eight hundred dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged and confessed, have granted, bargained and sold, and by these presents do grant, bargain and convey unto the said parties of the second part, their heirs and assigns forever, all those certain pieces or parcels of land situate in the county of Atchison, and State of Missouri, known and described as the west half of the southwest quarter of section No. eighteen (18), and the northwest quarter of the northwest quarter of section No. (19) nineteen, in township No. sixty-six (66) north, of range No. thirty-eight (38) west of the fifth principal meridian; and the northeast quarter of the northeast quarter of section No. twenty-four (24), in township No. sixty-six (66) north, of range No. thirty-nine (39) west of the 5th principal meridian according to the government survey of said State, containing, in the aggregate, one hundred and sixty acres, more or less, together with all and singular the tenements, hereditaments and appurtenances to the same belonging or in any wise appertaining, and also all the right, estate, title, interest, dower and right of dower, claim or demand, as well as in law as in equity, of the said parties of the first part in and to the above described premises, and every part thereof, with the appurtenances; and the said Robert Hawke and William E. Dillon, for themselves, their heirs, executors and administrators, do covenant, promise and agree to and with the said parties of the second part, their heirs and assigns, that the premises hereby conveyed in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the claims of every person lawfully claiming or to claim the same, they will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

ROBERT HAWKE. [SEAL.]
ELIZABETH HAWKE. [SEAL.]
WILLIAM E. DILLON. [SEAL.]
HANNAH R. DILLON. [SEAL.]

Signed, sealed and delivered in the presence of
G. B. SCHOFILD.

(Duly stamped.)

Acknowledged February 25th, 1869.

Filed for record July 28th, 1869.

IX.

WARRANTY DEED.

James M. Templeton and M. McKillop to James Wood.

This indenture, made on the 10th day of August, A. D. one thousand eight hundred and sixty-nine, by and between James M. Templeton and Susan Templeton, his wife; Aaron B. Durfee and Sallie Durfee, his wife; Malcolm McKillop and Carrie L. McKillop, his wife, of Atchison county, Mo., parties of the first part, and James Wood and William Miller, of the county of Atchison, in the State of Missouri, parties of the second part, witnesseth: that said parties of the first part, in consideration of the sum of one hundred and fifty dollars to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following-described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All of the northwest fourth of the southeast quarter of section No. (18) eighteen, of township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; to have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said parties of the second part and unto their heirs and assigns forever; the said parties of the first part hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by them or those under whom they claim, and that they will warrant and defend the title to the said premises unto the said parties of the second part, and to their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JAMES M. TEMPLETON. [SEAL.]
SUSAN E. TEMPLETON. [SEAL.]
MALCOLM McKILLOP. [SEAL.]
CARRIE L. McKILLOP. [SEAL.]
A. B. DURFEE. [SEAL.]
SALLIE DURFEE. [SEAL.]

Acknowledged August 10th, 1869.

Filed for record August 10th, 1869, Book 14, page 60.

X.

Know all men by these presents, that Joseph E. Ludlow and Margaret E. Ludlow, of county of Buchanan, in the State of Missouri, have this day, for and in consideration of the sum of two hundred and fifty (250) dollars to the said Joseph E. Ludlow and Margaret E. Ludlow in hand paid by James Wood, of the county of Atchison, in the State of Missouri, granted, bargained and sold, and, by these presents, do grant, bargain and sell unto the said James Wood, the following-described tract or parcels of land, situate in the county of Atchison, in the State of Missouri, that is to say: The southeast quarter of the southwest quarter of section No. twenty-eight (28), township sixty-six (66), range thirty-eight (38), containing forty (40) acres, more or less; to have and to hold the premises hereby conveyed, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said James Wood, his heirs and assigns, forever; and the said Joseph E. Ludlow and Margaret E. Ludlow hereby covenanting to and with the said James Wood, his heirs and assigns, for their heirs, executors and administrators, to warrant and defend the title to the premises hereby conveyed against the claim of ever person whatsoever.

In witness whereof we have hereto subscribed our names and affixed our seals, this 6th day of May, 1870.

JOSEPH E. LUDLOW. [SEAL.]
MARGARET E. LUDLOW. [SEAL.]

(Duly stamped.)

Acknowledged May 6th, 1870.

Filed for record May 21st, 1870.

XI.

WARRANTY DEED.

A. W. Miller to James Wood and William Miller.

This indenture, made on the 10th day of August, A. D. one thousand eight hundred and sixty-eight, by and between A. W. Miller, of Buchanan county, Missouri, party of the first part, and James Wood and William Miller, of the county of Atchison, in the State of Missouri, parties of the second part, witnesseth: that said party of the first part, in consideration of the sum of seven hundred and fifty dollars, to him paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All the west half of the southeast quarter of section twenty-four (24), township sixty-six (66), and range thirty-nine (39), and the southeast quarter of the southwest quarter of section twenty-eight, township sixty-six, of range thirty-eight. To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in any wise appertaining, unto the said parties of the second part, and unto their heirs and assigns forever; the said A. W. Miller hereby covenanting that he is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that he has good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by him or those under whom he claims, and that he will warrant and defend the title to the said premises unto the said parties of the second part, and to their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

A. W. MILLER. [SEAL.]

Signed, sealed and delivered in presence of us:

U. S. Revenue Stamp, $1.

Acknowledged August 10th, 1868.

Filed for record August 10th, 1868.

XII.

WARRANTY DEED.

James Wood and wife to William Miller.

This indenture, made on the 4th day of January, A. D. one thousand eight hundred and sixty-nine, by and between James Wood and Jane E. Wood, his wife, of Atchison county, Missouri, parties of the first part, and William Miller, of the county of Atchison, in the State of Missouri, party of the second part, witnesseth: that said parties of the first part, in consideration of the sum of nine hundred and forty dollars, to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns, undivided half the following lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: The southwest quarter of section (19) nineteen, and northeast fourth of the southeast quarter and the west half of the southeast quarter of section (19) nineteen, in township (66) sixty-six, of range (38) thirty-eight, and the southeast fourth of the southeast quarter of section (24) twenty-four, in township (66) sixty-six, of range (39) thirty-nine, containing in all three hundred and twenty (320) acres, more or less. To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in any wise appertaining, unto the said party of the second part, and unto his heirs and assigns forever; the said parties of the first part hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by them or those under whom they claim; and that they will warrant and defend the title to the said premises unto the said party of the second part, and to his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAMES WOOD. [SEAL.]
$1.00 stamp. JANE E. WOOD. [SEAL.]

Acknowledged February 4th, 1869.

Filed for record February 6th, 1869.

XIII.

WARRANTY DEED.

Mansel Graves and Wife to James Wood.

This indenture, made on the fourth day of August, A. D. one thousand eight hundred and sixty-eight, by and between

Mansel Graves and Ann Graves, his wife, of Atchison county, Missouri, parties of the first part, and James Wood, of the county of Atchison, in the State of Missouri, party of the second part, witnesseth: that said parties of the first part, in consideration of the sum of two hundred dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described lots, tracts or parcels of land, lying, being and situate in the county of Atchison, and State of Missouri, to-wit: All the southeast quarter of the southeast quarter of section number twenty-four (24), in township numbered sixty-six (66), of range numbered thirty-nine (39), containing, to the established survey, forty acres; to have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the said party of the second part and unto his heirs and assigns forever; the said Mansel Graves hereby covenanting that he is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that he has good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by him or those under whom he claims, and that he will warrant and defend the title to the said premises unto the said party of the second part and to his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

MANSEL GRAVES. [SEAL.]
her
ANN ✕ GRAVES. [SEAL.]
mark.

U. S. revenue stamp, 50c.

Acknowledged August 4th, 1868.

Filed for record August 5th, 1868.

This indenture, made on the 3d day of January, one thousand eight hundred and seventy-six, by and between William Miller and Mary Miller, his wife, of Hardin county, in the State of Ohio, parties of the first part, and Melchor H. Horn and Valentine W. Weaver, of Lehigh county, State of Pennsylvania, parties of the second part, witnesseth: that the said parties of the first, in consideration of the sum of thirty-six thousand four hundred dollars, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second, their heirs and assigns, all the following described lots, tracts or parcels of land, lying and situate in the county of Atchison and State of Missouri: The northwest fourth of the southeast quarter of section No. (18) eighteen, of township No. (66) sixty-six, of range No, (38) W. 5th P. M.; the southwest fourth of the southeast quarter of section No. (25) twenty-five, in township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M.; the east half of the northeast quarter, and the north half of the southeast quarter of section No. (25) twenty-five, of township No. (66), of range No. (39) thirty-nine W. 5th P. M.; the northwest fourth of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M.; the northwest fourth of the northwest quarter of section No. (25) twenty-five, of township No. sixty-six (66), of range No. (39) thirty-nine W. 5th P. M.; the southeast fourth of the southeast quarter of section No. (24) twenty-four, in township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M.; the west half of the southeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M.; the northeast fourth of the southeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M.; the southeast fourth of the southwest quarter No. (28) of twenty-eight, of township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; the southeast fourth of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M.; the southwest fourth of the northwest quarter of section No. (19) nineteen, of township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; the west half of the southwest quarter of section No. (18) eighteen, of township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; the northwest fourth of the northwest quarter of section No. (19) nineteen, in township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; the northeast quarter of the northeast quarter of section No. (24) twenty-four, of township No. (66) sixty-six, of range No. (39) thirty-nine W. 5th P. M; the southeast fourth of the southeast quarter of section No. (19) nineteen, in township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; the southwest quarter of section No. (19) nineteen, of township No. (66) sixty-six, of range No. (38) thirty eight W. 5th P. M.; the northeast fourth of the southeast quarter of section No. (19) nineteen, of township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M.; the west half of the southeast quarter of section No. (19) nineteen, in township No. (66) sixty-six, of range No. (38) W. 5th P. M.; and the following in Nodaway county, in the State of Missouri: The northwest fourth of the northeast quarter of section No. (15) fifteen, in township No. (66) sixty-six, of range No. (38) thirty-eight W. 5th P. M. To have and to hold the premises aforesaid, with all and singular the rights, privileges, and appurtenances and immunities thereto belonging, or in any wise appertaining, unto the said party of the second part, and unto their heirs and assigns forever; the said William Miller and Mary Miller hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by them or those under whom they claim, except a certain deed of trust executed by William Miller to William L. Patterson, of Whiteside county, Illinois, about the 10th of November, 1873, and now held by Eli J. Seager, of Lehigh county, in the State of Pennsylvania, which said deed is to secure the payment of $16,000, recorded in the recorder's office of Atchison county, Missouri, in mortgage book 8, at page No. 41; and that the said William Miller and Mary Miller will warrant and defend the title to the said premises unto the said parties of the second part, and unto their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Acknowledged January 3d, 1876.

Filed for record January 3d, 1876.

XV.

State of Missouri, }
County of Atchison. } ss.

Be it remembered that in Atchison county, Missouri, the following *lis pen dens* was filed in the office of the clerk of said court on the 23d day of October, 1874:

H. F. Bean and J. W. Alsop, under the firm name of Bean & Alsop, *Plaintiff*,
vs.
William L. Patterson, Mary Miller and William Miller, *Defendants.*

In the Atchison County Circuit Court. January Term, 1875.

To Whom it May Concern:

Take notice that a suit entitled as above has this day been filed in the circuit court of Atchison county, Missouri, by the above-named plaintiffs, against the above-named defendants, for the purpose of setting aside and declaring void a deed of trust, in said suit described, executed by said William Miller and Mary Miller to said William L. Patterson, purporting to convey to said William L. Patterson the following-described real estate in Atchison county, Missouri, to-wit: The northwest fourth of the southeast quarter and the west half of the southwest quarter of section No. eighteen (18), the south half and the west half of the northwest quarter of section No. nineteen (19), and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight (38); also the east half of the northeast quarter and the northwest fourth of the northeast quarter of section No. twenty-four (24), and the northwest fourth of the northwest quarter; the east half of the northeast quarter, the north half of the southeast quarter and the southwest fourth of the southeast quarter of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39); to have and to hold in trust, for the purpose of securing the payment of sixteen thousand dollars and interest by said William Miller to Mary Miller, which trust deed is subject to be set aside on the ground of fraud to creditors and others.

H. F. BEAN.
J. W. ALSOP.

Per LEWIS & ESTEB, Attorneys.

Filed for record October 23d, 1874.

JAMES M. TEMPLETON, Recorder.

Per J. W. SMITH, Deputy.

JOHN D. DOPF, of lawful age and sound mind, being first cautioned and duly sworn to testify the whole truth touching the matters in controversy in said civil cause, and carefully examined, peposes and says:

My name is John D. Dopf, and I reside in Rock Port, Atchison county, Missouri, and have resided here about eighteen years. I am publisher of a newspaper, and am engaged in the real estate business. I am pretty well acquainted with the real estate of the county. I was county surveyor about six years, and deputy sheriff about twelve years, and I have a set of abstracts of titles to lands in Atchison county.

Question. Do you know any of the parties to this suit? and if so, state whom.

Answer. Can't say that I am acquainted with any of them except Miller.

Q. Do you know the land that is controversy in this suit?

A. I suppose I do. I know all the lands that Miller or his wife ever owned in the county.

Q. Do you know the quarter section on which stands the house in which E. F. Powell resides?

A. Yes. It is on the southeast quarter of section twenty-four, township sixty-six, range thirty-nine.

Q. Do you know the kind of land, its value and rental value, in the south half of section nineteen, T. 66, of R. 38, and the quarter on which the house stands? If so, state its value per acre and rental value.

A. The southeast quarter of section twenty-four is the most valuable. It is worth twenty-eight dollars per acre, and its rental value is not worth over two dollars and a half per acre. That would be an average yearly rental for the last seven years. The south half of sec. 19 is worth about twenty dollars per acre, and its rental value is a dollar seventy-five to two dollars per acre on an average for the last seven years.

Q. Describe the balance of the land in secs. 24 and 18 and 19, give their value and the value of their yearly rental per acre for the past seven or eight years.

A. There is the northwest of the southeast of sec. 18, T. 66, R. 38, that is not in cultivation, but is fenced by other people's lands. It is worth fifteen dollars per acre. The east half of the southwest of sec. 18, T. 66, R. 38, all bottom land, is worth eight dollars per acre. The west half of the northwest of sec. 19, same township and range, is worth about fifteen dollars per acre; it is not in cultivation; the most of it is up-land, and part of it bottom land. The southeast of the northeast of twenty-four, T. 66, R. 39, is a fairly good piece of bottom land, and is worth about twelve and a half dollars per acre. The north half of the northeast of sec. 24 is worth eight dollars per acre. All the lands described last are north of the lands first described in this deposition. All they are fit for is to herd, and are all unimproved, and their rental value is about one dollar per acre.

Q. In same way describe the land in sec. 25, T. 66, R. 39.

A. The east half of northeast of sec. 25, T. 66, R. 39, is worth about eighteen to twenty dollars per acre; it is fenced, with house upon it. The soathwest of southeast of sec. 25 is worth twenty dollars per acre. The northeast of southeast of sec. 25 is worth twenty dollars per acre, and the northwest of the southeast is worth twelve and a half dollars per acre. The northwest of the northwest of sec. 25 is not improved, and is worth about eight dollars per acre. These lands lay south and southwest of the other lands mentioned. They are mostly up-lands, but about one-third of them is bottom land.

Q. Do wild prairie lands have any rental value in this county?

A. They have rental value, but it is merely nominal; enough to pay taxes.

Q. Describe the lands in sec. 28, 66, 38, in the same manner.

A. The southeast of the southwest of sec. 28 is worth from eight to ten dollars per acre. It is up-lond, and is hilly.

Q. Are there any springs or branches on the lands you have described?

A. There is a long branch running through the south half of sec. 19 and southeast of sec. 24.

Q. What kind of improvements are on the southeast of sec. 24?

A. There is a very good dwelling house, which cost about fifteen hundred dollars; there is quite a large barn, but it is nothing extra, just a shell about sixty feet long. There is a pretty good corn crib also. There are also feed lots and other outbuildings.

Q. Have you a diagram of the main body of land you have described?

A. I have. (Witness shows paper hereto annexed and herewith returned and marked "Exhibit A.") This plot shows all the lands I have been talking about, and the deep black lines encloses on paper the main body of lands in controversy. The range line between ranges 38 and 39 divides also secs 13 and 18, 24 and 19, 25 and 30, as marked on this diagram.

CROSS-EXAMINATION.

Question. For what is this farm, taken as a whole, best adapted?

Answer. I should say it is best adapted for a stock farm.

Q. Who first improved the farm, and for what purpose does it appear to have been improved?

A. It was first improved by James Wood and William Miller, for a stock farm.

Q. State whether any part of these raw lands are so enclosed by fences or streams as to make them available, in connection with the plow land, as a stock farm.

A. They are, except 120 acres.

Q. Take this entire farm together, as a stock farm, and what is its fair average rental value?

A. To take it all together now, two dollars an acre would be a fair rental value.

Q. State what would have been the fair average value of this farm during the last five years, had the raw lands had been fenced and judiciously used.

A. I think two dollars an acre is as much as it would be worth.

Q. State how long the farm was occupied by Wood and Miller.

A. I think Wood sold his half of the farm prior to 1873, to William Miller.

Q. State whether or not you did not, as agent, sell a considerable portion of these lands to Wood and Miller, and if so, with whom did you contract?

A. I do not remember of selling any of these lands, or having any land dealings with those men. My impression is that Durfee & McKillop sold the lands before I became a member of the firm.

Q. What firm, and when did you become a member of it?

A. Durfee, McKillop & Dopf, and I became a member of it in 1869.

Q. State whether you remember taking the acknowledgment of the deed from James Wood to William Miller at the time Wood sold his interest in the farm to Miller; and if so, how much money was paid at the time, and what did you understand from their conversation to have been their relation to each other. [Defendants object to that part of the question which calls for the understanding of the witness as to the purport of the conversation.]

A. I don't remember distinctly about taking the acknowledgement of the deed; don't remember what money, if any, was passed; I remember there was very ill feeling between the parties at the time. I remember they were co-partners; think we drew up some kind of an instrument at that time.

Q. If you remember, from the conversation between them, which one had furnished the greater part of the purchase money for said lands, please state which one? [Objected by defendant as irrelevant conversation among strangers.]

A. My remembrance is that Miller claimed to have furnished the money, or the larger part of it.

Q. State whether you remember about the purchase of a farm by Miller, in his wife's name, about this time, from one G. R. Ramsey; and if you know, about how long after the purchase was it before Mr. Ramsey received his pay?

A. I know of the purchase of the farm from Ramsey, but do not know the length of the time after the purchase till Ramsey received his money. Think it was some time. Ramsey was here, and said he was on his way to Omaha to see Miller and collect the money.

Q. At what place did Miller at that time reside?

A. My remembrance is that he lived at Omaha at thattime, or that that was his headquarters.

Q. State if you know from conversations with either William or Mary Miller, had about the time of making the purchases from Wood and Ramsey, from what source Mr. Wood derived the moneys paid upon these lands? [Objected to because the question does not call for the witness' knowledge, but for declarations of William and Mary Miller, which are not binding upon their co-defendants.]

A. I do not know anything about it.

Q. State whether any part of the money for either the Wood and Miller or the Ramsey farm passed through your hands; and if so, how much, in what shape, and on what account?

A. A check of William Miller of upwards of twenty-four hundred dollars was passed to the credit of G. R. Ramsey upon the books of Durfee, McKillop & Co., of which I was a member, August 4th, 1870, but upon what account I can't say. I have no recollection of any other payments connected with the transaction.

Q. State whether you know of the purchase of the lands in controversy, at the time, by the respondents Horn and Weaver; and if so, what part did you take in assisting them in their purchase, and for what persons, so for as you know, were they acting, and who employed you?

A. I knew of some persons buying the lands, but did not know who. My recollection is that Durfee & Wyatt employed me or Mr. John W. Smith to make an abstract of title to these lands, and we did make the abstract, and they paid us for it.

Q. State whether, at the time of making the abstract of title, you found and reported an attachment suit in favor of Bean & Alsop against the lands? [Objected to because it calls for the contents of the abstract, and is secondary evidence.]

A. I suppose we did, and if we did it is on the abstract.

Q. State whether or not you were present at the time of the eonveyance of these lands by Miller and wife to Horn and Weaver; and if so, in whose interest were they acting, and how much money, if any, was paid in cash?

A. I have no knowledge at all of that trade.

Q. About what would be the average market value of the lands involved in this suit were they entirely unimproved?

A. They would be worth from twelve and a half to fifteen dollars per acre. They would sell for nearly as much as when they are improved.

RE-DIRECT.

Q. Take all that land in a body as it now is, what would be its average rental value? [Objected to for the reason that the same question has been answered.]

A. Think it is worth two dollars per acre.

Q. Does the southeast quarter of sec. 24, improved and situated as it is relative to the other lands, enhance the value of the whole tract? [Objected to as leading, and improper re-direct examination.]

A. The whole tract is better with it than without it.

Q. Is there much or little bad land in the south half of sec. 19 and the southeast of sec. 24.

A. It is about half and half.

Q. As you have known this land, what has been the average rental value of the whole body for the past seven years?

A. From one dollar fifty to one dollar seventy-five, just as I have known the land.

Q. Is the rental value of that farm worth any more as a stock farm than for any other use?

A. I think it is.

Q. Then the purposes for which it is used control its rental value in your estimation?

A. That is the idea I have of it. The grazing of the lands not in cultivation are worth something for grazing purposes.

Q. To produce the highest rent from this place, it should be used as a stock farm? [Objected as leading.]

A. I think it should.

Q. Has your estimate given in your cross-examination been based on the assumption that the farm should be used as a stock farm?

A. Yes.

Q. Do you know how much of this land Wood and Miller had under fence?

A. I don't know exactly. I know they had the south half of sec. 19, and the southeast of sec. 24, and possibly a portion north of that fenced. The pasture land is about as good not fenced.
JOHN D. DOPF.

[Exhibit "A" attached hereto is the same as the plat attached to complainant's paper No. 14, hereinbefore set out.]

I further certify that the foregoing deposition of John D. Dopf was then and there reduced to writing by me, in the presence of the deponent, and by him subscribed in my presence and in the presence of counsel of both parties, after having been so reduced to writing and read over to said witness in my presence and in the presence of said counsel.

LANDON W. CAMPBELL, Notary Public.

SAMUEL DEAKINS, being of lawful age and sound mind, and being by me first cautioned and duly sworn to testify the whole truth touching the matters in controversy in said civil cause, and carefully examined, deposes and says:

I am a farmer by occupation.

Question. Do you know the tract of land in this county now occupied by E. F. Powell, situated in township 66?

Answer. I do. I reside on the east end of the south half of nineteen.

Q. Look at the diagram which is attached to Mr. Dopf's deposition as exhibit "A," and tell me which of these lands are tilled and for what purpose the remainder of them are used.

A. The southeast of sec. 24 and south half of sec. 19 are fenced in one field. About half of them are tilled and about half not. The half not tilled is not susceptible of tillage, and lies along the branch that runs through the field as indicated on the diagram.

Q. What is the character of that land?

A. I would suppose it to be medium land.

Q. What is its rental value per acre?

A. I would not like to pay over one dollar seventy-five to two dollars per acre.

Q. What is the most profitable use this untilled land can be put to?

A. Its best use would be for pasture.

Q. How long a fence would it require to inclose the bad lands?

A. It would take three miles and a half of fence anyway.

Q. What would it cost per rod to fence it?

A. It would cost from twenty-five to thirty cents per rod for board fence. I have not done any fencing out in that country.

Q. What kind of land north of the main body, as indicated on the diagram, and for what is it used?

A. Most of it is bottom land, and is used for pasture. I do not know how long it has been under fence.

Q. What kind of land is that in sec. 25?

A. I think it is better land than any of the other land; a part of it is used for farming, and part of it is not used at all. It was fenced in 1879.

Q. What is the average rental value of the pasture land for the past six or seven years?

A. It has only been the last year or two that pasture land has been in demand. Since I have known the pasture land it has not been worth over one dollar per acre.

Q. What is the average rental value of the land in sec. 25 since 1879?

A. It would be worth about one dollar and a half per acre.

Q. How long have you known that place?

A. Since 1879.

Q. What kind of a crop is raised on the place this year? [Objected to as immaterial.]

A. Part of it is good, and part bad. The season has been unfavorable, but about half of it is good for this year, and the other half bad.

Q. How does the crop compare with that of previous years?

A. The crop this year is not so good as was the two previous years.

Q. What was the average yield of corn per acre on this land in 1880?

A. I suppose about fifty bushels per acre.

Q. How was it the year before?

A. It was not so good. It only made about forty-five bushels per acre.

Q. What is the custom for renting in your country—for money or grain?

A. Majority of the land rents for grain rent—some for money.

Q. What was corn worth on the place, per bushel, in harvesting time, when you went there?

A. I think corn sold on the place for from fifteen to eighteen cents per bushel.

Q. What was it worth in harvesting time, 1880?

A. It wasn't worth twenty cents.

CROSS-EXAMINATION.

Q. How much of the farm are you cultivating this year?

A. About 95 or 100 acres.

Q. On what part of the land is yours situated?

A. It is situated on the north part of the southeast of sec. 19.

Q. What other tenant is farming on the S. E. quarter of sec. 19?

A. James and George McKay.

Q. How much land have they in that quarter?

A. I think about 18 or 20 acres on the south side.

Q. Who is farming the north side of the southwest quarter, and how much is the farming?

A. It is farmed by Perry Waldron and A. E. Miller. I don't think they have quite as much as I have. They have about fifty acres.

Q. Who farms the southwest fourth of sec. 19 south of the creek?

A. The McKay boys.

Q. How much have they there?

A. I suppose they have about thirty acres.

Q. How much actual farming land is there on the southeast of sec. 24?

A. I think about half of it is in cultivation.

Q. Who cultivates it?

A. The McKay boys, Miller and Mr. Powell, I suppose.

Q. How much land is in cultivation north of the south half of sec. 19?

A. I do not know. There is none in cultivation north of my north line.

Q. Who makes use of the land north of your north line, and for what purpose?

A. Mr. Powell makes use of it for pasture.

Q. To what extent, about how many, and what kind of stock does he keep on the farm and pasture?

A. He keeps about one hundred and fifty head of cattle and five or six horses.

Q. What does he do with the rent and other grain he obtains off the farm?

A. He feeds it to the cattle, horses and hogs on the farm.

Q. What proportion of the grain does Mr. Powell charge the tenants on the farm for rent?

A. Some he charges one-third, others one-half and he gathers the crop, and some pays one-third in the crib.

Q. Has he not, as a rule, charged about two-fifths in the crib?

A. No, sir; I know that he has not charged two-fifths since I have been on the place.

Q. Will your crop this year average twenty-five bushels to the acre?

A. I do not know. We suppose it will.

Q. Where is your nearest corn market?

A. Blanchard, about five miles and three-quarters distant.

Q. What is it worth per bushel to haul corn from Powell's to Blanchard?

A. I guess about three and a half cents shelled, and about four in the ear.

Q. What is now the market price for corn in Blanchard?

A. It is worth about forty-eight cents.

Q. What was the market price for corn about the first of last July, at Blanchard?

A. I got twenty-seven cents for some.

Q. About what is such corn as yours now worth in the field?

A. I do not know.

Q. How will the price of this year's corn compare with the price of corn this time last year?

A. It will be higher. Can't say how much.

Q. Who cultivates the land in sec. 25?

A. Mr. Ohl and Chas. Murchy.

Q. How much has each one?

A. Mr. Ohl told me he had about fifty-three acres, and Mr. Murchy has the balance of the land.

Q. From what part of the farm does Mr. Powell obtain his hay?

A. I think he gets some of it off of the land in sec. 25, and some up in the bottom, on the north land.

Q. About how many acres of hay does he cut off the land in sec. 25?

A. I do not know. I can see that he has cut some. Can see four or five stacks on the land.

Q. Who has charge and control of the farm in question?

A. Mr. E. F. Powell.

Q. For whom is he acting?

A. I do not know.

Q. Have you ever heard him state what interest he had in the land?

A. I never did.

Q. Have you ever seen Mr. Horn, Seager or Weaver about the farm?

A. I had an introduction to Col. Horn, and saw a man whom they said was Mr. Seager pass along the road. Col. Horn was in a buggy with Mr. Powell, close to the farm, when I saw him.

Q. State whether Mr. Powell introduced him as one of the owners of the farm.

A. No, sir. He introduced him as Col. Horn, of Allentown, Pennsylvania.

Q. At whose request did you come here to testify?

A. At the request of Mr. Powell.

Q. You stated awhile ago that some lands in your neighborhood, were rented for cash; if so, how much?

A. I do not know how much.

Q. Do you really know anything about what is the cash rental value of such lands as the farm in question?

A. About all I really know is what I have heard other men say—it was worth about two dollars per acre.

Q. Have you heard anyone else talk about the matter except Mr. Powell or parties in sympathy with him?

A. Yes, I have. Men who do not have anything to do with Mr. Powell.

Q. Did not the parties who spoke of the land being worth only two dollars per acre have reference to the way Mr. Powell managed the farm?

A. I have heard them say that they would not give over two dollars per acre. They made no complaint about the way he was managing the land.

SAMUEL A. DEAKINS.

I further certfy that the foregoing deposition of Samuel A. Deakins was then and there reduced to writing by me, in the presence of deponent, and that the same was read him and subscribed by him, after being so reduced to writing, in my presence and in the presence of the counsel of both parties.

LANDON W. CAMPBELL, Notary Public.

SOLOMON D. OHL, being of lawful age and sound mind, and being by me first cautioned and duly sworn to testify the whole truth touching the matters in controversy in said civil cause, and by me carefully examined, deposes and says:

Question. Where do you reside?

Answer. I reside in Atchison county, sec. 25, T. 66, R. 39.

Q. Look at the diagram marked "Exhibit A," to Mr. Dopf's deposition, and tell me the particular location of your house.

A. I live in the northeast corner of sec. 25, and the house is indicated by a dot marked on the diagram.

Q. Where is Mr. Powell's house situated?

A. In the southeast corner of sec. 24, and the house is indicated by a dot marked on the diagram. There is a public road between my house and Powell's. It runs along the south side of sec. 19.

Q. How long have you known the lands in controversy?

A. This is the sixth summer that I have known it.

Q. How much of that land was under fence and used for farming purposes six years ago?

A. The south half of sec. 19, 66, 38, and the south half of sec. 24, 66, 39.

Q. In what condition was the balance of the land in controversy?

A. They were wild lands.

Q. Did you have anything to do with farming it six years ago?

A. No, sir.

Q. When did Powell move there?

A. About four years and a half ago.

Q. What is your description of the south half of sec. 19, and the southeast of sec. 24?

A. I call them the six eighties.

Q. Describe the kind of land in the six eighties, and its condition?

A. Part of it was good land and part was bad, full of scrub oaks. The bad land was right along the branch, through the center of the tract. It was about two-thirds bad land, hard to break.

Q. How much of the bad land of the six eighties has been broken since five years ago, and when?

A. We broke out, in 1876, fifty acres; in 1877, eighteen acres.

Q. What was it worth, per acre, to break that land?

A. We paid five dollars per acre, and it was worth it.

Q. When was the land north of the six eighties fenced?

A. In 1879. It took two miles of fence and cost sixty-five cents per rod. It was a barbed wire fence.

Q. What has been and is the use of this land, since fencing?

A. We have used it for pasture.

Q. Did you or Mr. Powell use that land for any purpose, or derive any profit therefrom before it was fenced?

A. None whatever.

Q. Did anyone else use that land or derive any profit from it before it was fenced? If so, state whom?

A. No, sir. It was a part of the general range of the country. Everybody's cattle ran there that wanted to.

Q. When was the land south of the six eighties fenced, and by whom?.

A. In the spring of 1879, by E. F. Powell and myself.

Q. Was this land used by Powell, or any one, or any profit derived by Powell, or any one, therefrom, before it was fenced?

A. No, sir. Everybody's cattle ran on it. It belonged to the common range.

Q. For what purpose has it been used since it was fenced?

A. For the purpose of raising corn.

Q. How much of it?

A. About fifty-five acres in 1879. In 1880 we put in fifteen acres more. We cut some hay from the balance of the land.

Q. How much fence did it take to enclose that piece of land, and what did it cost per rod?

A. There was a mile and three-quarters, and cost 55 cents per rod.

Q. Is the forty acres in the northwest quarter of sec. 25, as indicated on the diagram, occupied by anyone, or used for any purpose, or has it been since you have known it? What kind of land is it? Describe its condition.

A. It is not occupied, nor fenced, nor used by anybody in particular. It belongs to the common range. It has not been used for any purpose since I have known it. There is about two acres of timber; the balance is wet bottom land. It borders on the east Torkio.

Q. Is the 40 acres in the southeast quarter of sec. 18, 66, 38, occupied or used or rented by Mr. Powell?

A. It is not.

Q. Is it fenced? and if so, how?

A. It is fenced by Mr. Walkinshaw—*i. e.*, Mr. Walkinshaw's lands surround this forty, and his land is fenced.

Q. What is the condition of that forty?

A. It has never been broken.

Q. Has Mr. Powell, or anybody besides Walkinshaw, anything to do with that forty? and if so, state.

A. I guess not; not that I know of.

Q. When was it fenced by Walkinshaw?

A. In the spring of 1879.

Q. What quality of land is it?

A. It is pretty good land; upland prairie.

Q. Do you know anything about the forty acres in the southwest of sec. 28, as indicated on this diagram?

A. I don't know anything about it. I never saw it.

Q. Is it used in connection with the main farm?

A. No, sir.

Q. Is it used in any way by Powell?

A. No, sir.

Q. Has the land described by you as the six eighties been cultivated by Powell or by his tenants?

A. Mostly by his tenants.

Q. How much grain rent did he receive from the six eighties for the year 1877? [Objected to as immaterial.]

A. As near as I can tell, 3,000 bushels of corn.

Q. What was that worth per bushel at harvesting time, on the farm, in 1877?

A. It was worth fifteen cents per bushel.

Q. How much grain rent did he receive for the six eighties for 1878? [Objected to as immaterial.]

A. About 3,200 bushels of corn.

Q. What was that corn worth per bushel at harvesting time in 1878, on the farm?

A. It was worth ten cents per bushel.

Q. What grain rent did he receive for the six eighties for the year 1879; and if he received corn, what was its price per bushel? [Objected to as immaterial.]

A. He received about 3,500 bushels, and it was worth ten cents per bushel.

Q. How much grain rent did he receive for the six eighties for the year 1880; and if he received corn, how much was it worth per bushel on the place at harvesting time? [Objected to as immaterial.]

A. About 4,000 bushels, and it was worth twenty-five cents per bushel.

Q. What was the reason for the rise in price of the corn?

A. It was caused by building the St. Louis & Council Bluffs railroad through that part of the country, within seven miles of the farm.

Q. During these four years how was the farm tilled?

A. It was pretty well tilled.

Q. How much of the six eighties did Powell till himself during these four years?

A. That is pretty hard to tell. The first year, about seventy acres; second year, none at all; third year, none; fourth year, about twelve acres.

Q. What and how much did he raise the first year on the seventy acres?

A. He raised about 2,000 bushels of corn, worth about 14 cents per bushel.

Q. How much did he raise on the twelve acres last year?

A. About twenty-four tons of millet. Can't tell the value.

Q. On what terms did he rent the land for those years?

A. He rented to different parties for one-third, husked and delivered in the crib. The same terms for all parties.

Q. Who got the grain rent for this land, the six eighties, for 1876?

A. Mr. Powell got it—about 3,000 bushels, and it was worth about twenty-five cents per bushel in 1876.

Q. How much corn was raised on the land in sec. 25 in 1879?

A. There was about 1,650 bushels.

Q. What portion of that did Mr. Powell get for rent? [Objected to as immaterial.]

A. He received 550 bushels for rent. It was worth ten cents per bushel.

Q. How much grain rent did he get from that piece of land in 1880? [Objected to as immaterial.]

A. He got one-half of the corn standing in the field, amounting to 1,050 bushel. It was worth about 22 cents standing in the field.

Q. What is the prospect of the crop on all those lands for this year, as compared with previous years?

A. It is pretty hard to tell. I think it will average about 18 bushels per acre this year. It is about half, or quite half, of an average crop for the last five years.

Q. What is a fair average rental value for the pasture, per acre, north of the six eighties, for 1879, 1880 and 1881?

A. One dollar per acre.

Q. Who has had the control and management of this place during these years?

A. E. F. Powell.

Q. How have you been connected with that place during this time?

A. I was hired by E. F. Powell after the first year.

Q. Do you know anything about the payment of any taxes on this place? And if so, by whom were they paid? [Objected to as not the best evidence.]

A. All I know is that E. F. Powell paid some taxes. I saw the receipts, but how much he paid I can't tell.

Q. What would it cost to fence what you call the bad land in the six eighties, so it could be used for pasture?

A. It would cost about $330.

CROSS-EXAMINATION.

Q. At what time did you come to this country, and from what place did you come?

A. I came here the 24th day of February, 1876, from Allentown, Pennsylvania.

Q. At whose instance, and for what purpose, did you come here?

A. That is hard to answer. I was in W. B. Powell's office, and he asked me if I would not like to go West. I told him to give me $50 and I would go. He told me to go to the Catasauqua Bank and get the money. I went and got it. M. H. Horn, cashier of the bank, paid it to me. I came about three days afterwards.

Q. What was the purpose of your coming?

A. To work on the farm and raise stock.

Q. How long after the conversation with W. B. Powell before you came West?

A. About four days.

Q. Who, if anyone, came with you?

A. Nobody.

Q. Who had charge of the farm at the time you came?

A. William H. Wyley.

Q. For whom was he managing the farm, and how long did he run it?

A. I do not know. They used to call it the Lehigh Land Company. It went under that name. He run it one year and died.

Q. What relation, if any, is W. B. Powell to E. F. Powell, and have they any business relations to each other?

A. W. B. Powell is the father of E. F. Powell. They used to be in business in agricultural implements before E. F. Powell came to the farm.

Q. State the names of as many of the parties as you can, who compose the Lehigh Land Company.

A. I do not know, only what Mr. Wyley told me.

Q. What did he tell you? [Objected to as hearsay.]

A. He told me Eli J. Seager, M. H. Horn, a man by the name of Weaver, W. B. Powell & Son, belonged to the company.

Q. Were you acquainted with Mr. Wyley prior to coming on the farm here? If so, where?

A. I was not.

Q. At the time of your conversation with W. B. Powell, in Allentown, did he explain, or in any manner inform you, who were interested in the farm here, or what was wanted with you?

A. He did not. He said there was a tract of land out here, and I should go out to farm it.

Q. What wages did they agree to pay you for working here, and with whom did you contract?

A. I was to have $30 per month. I contracted with Wyley.

Q. To whom did Mr. Powell direct you to report, when you reached the farm?

A. To E. F. Powell. He was on the farm temporarily at that time.

Q. Did any one of the parties you have mentioned as belonging to the Lehigh Land Company inform you whether Mr.

Wyley had charge of the farm, and if so, which one? [Objected to because he hasn't said anyone belonged to the Lehigh Land Company, and because the question assumes that he did say so.]

A. I don't know that anyone said anything about that; not that I remember.

Q. State whether, at the time you first came here, you ever heard E. F. Powell speak as though he or his father were interested in it.

A. All that I heard him say was that we were going to raise cattle and hogs, and make improvements on the farm.

Q. State whether or not he ever spoke of Seager, Horn, or either of them, being interested in the farm, either on your first trip, or within the first two years after you came.

A. He never said anything about it to me; about being interested in the land.

Q. At the time you obtained the $50 at Catasauqua Bank, what instructions, if any, did Mr. Horn give you about the place, or what you were to do?

A. He never gave me any instructions. I never was acquainted with the man.

Q. How long had E. F Powell been here at the time you first came, and what was he doing?

A. He was here about two months before I came. He stayed mostly in Nebraska City. He came down here occasionally, and sometimes he went out to the Rocky Mountains. Don't know what he was doing. He didn't seem to be interested in the farm.

Q. Had you, prior to coming here, ever had any considerable experience in farming and stock raising?

A. I was raised in that kind of business in Pennsylvania.

Q. You may state whether Horn, Seager, Weaver and W. B. Powell, or either of them, have ever been to visit the farm since you have been on it, and if so, which of them? And if anyone has been there more than once, so state, and give about the times of their visits.

A. Mr. Seager was here in 1876, about October; W. B. Powell was here in 1877, about October; Mr. Seager was here in 1878, about October; Mr. Horn was here in 1879, about the same month.

Q. How long was W. B. Powell here?

A. He was here about eight days. He said he came here to hunt. He stayed with me that time.

Q. Did he talk with you anything about the management of the place, as to how it was getting along, or anything relative to his interest in the place?

A. He asked how we were getting along, and how I liked the western country. He said nothing about being interested in the farm.

Q. Does Mr. E. F. Powell put in a good deal of his time hunting?

A. He puts in about five days out of the week in hunting season.

Q. How much corn did E. F. Powell sell in 1878 and 1879, at ten cents per bushel?

A. Not any.

Q. Whose corn was sold on that farm, in those years, at that price, and who purchased it?

A. Thos. Emmert took some of the corn on a mortgage that he held against one of the tenants, and I bought some of the corn at ten cents per bushel in 1879, and the balance of the corn was offered to me and Mr. Powell at ten cents per bushel in 1879, and the balance of the corn was offered to me and Mr. Powell at ten cent, and we didn't need it.

Q. What was the highest price at which corn sold in the springs of 1879 and 1880?

A. In the spring of 1879 it was worth about twelve or fifteen cents, and in the spring of 1880 worth about twenty-five, in my neighborhood.

Q. Is it considered thrifty farming in your neighborhood to sell corn in the fall? Is it better to sell in the spring following? [A question of law for the witness, and objected to as immaterial.]

A. That is hard to answer. It might be a little higher in the spring.

Q. Prior to the building of the railroad, was it, as a rule, thrifty farming to raise corn at all to sell? and was it not the rule of all your thrifty farmers to feed stock upon their farms? [Objected to because such management would not raise the price of corn on the farm.]

A. I think they should feed it, as there is more money in it.

Q. Has Mr. Powell been in the habit of selling or feeding the products derived from the farm? [Objected to as immaterial and not cross-examination.]

A. He has been in the habit of feeding the products and selling the stock.

Q. How much stock has he, as a rule, kept upon that farm?

A. The first year he had none. Five years ago he had seventeen head. Now he has one hundred and fifty head. He may have had sixty-five head of cattle per year on an average. He also has horses and hogs.

Q. State whether or not he has been in the habit of buying and selling stock on the place?

A. Yes, sir; he has bought some, and fattened them, and sold them.

Q. What is the nearest market place to the farm in question?

A. Blanchard, Iowa; seven miles distant.

Q. About what is now the market price for last year's corn, at Blanchard, Iowa?

A. They say it is worth about forty-eight cents.

Q. Why is corn now so high?

A. I guess there is but little in the country.

Q. Has not the shortage of this year's crop something to do with the price?

A. I think it has.

Q. Will not the half crop you have on your farm this year sell for as much money, on account of this shortage, as a full crop in an ordinary year?

A. I don't think it will quite; it will not lack much of it.

Q. How much of the southeast fourth of sec. 24 is in cultivation?

A. There is a little over one-third of it in cultivation.

Q. How much of the south half of sec. 19 is in cultivation?

A. There is about one hundred and eighty-five acres.

Q. How much of the land north of the six eighties is good, tillable land—*i. e.,* if it were cultivated?

A. About sixty-five acres.

Q. About how much of the land in sec. 25 would make good, tillable land?

A. About one hundred and sixty acres.

Q. How much of the forty acres adjoining the Walkinshaw farm is susceptible of cultivation?

A. About thirty-eight acres.

Q. Is there any reason why these lands could not have been fenced in 1876 as well as later, and placed in cultivation? [Objected to as immaterial.]

A. I don't know of any reason why it could not have been.

Q. Who makes use of the forty acres surrounded by Walkinshaw's land?

A. Mr. Walkinshaw is pasturing cattle upon it.

Q. Why does not Mr. Powell require him to pay rent for it?

A. I don't know.

Q. What is the ordinary cost of a fence-post delivered on said land?

A. Fifteen cents each.

Q. How many pounds of wire does it take to make one rod in length, running measure?

A. It takes about eighteen ounces.

Q. How many wires do you ordinarily use in building a wire fence, and how far apart do you place the posts?

A. Three barbed wires, and place the posts about one rod apart.

Q. What is the cost per pound of such wire, and how much a rod does the work of putting up such a fence cost?

A. The wire costs about ten cents per pound; two cents and a half each for setting the post, and about two cents and a half per rod for putting up the wire.

Q. What other expense, if any, in building a wire fence, and how much?

A. There is nothing else except the end props, which cost about the same as posts.

Q. Does Mr. Powell and his tenants and yourself, or any of them, obtain their wood and fuel from this farm?

A. Yes, sir.

Q. Have any of the materials for building the fences you have mentioned been obtained off the land?

A. We have made about six or seven hundred posts on the place.

Q. Do you know of any lands similar to yours being rented in your neighborhood for cash, and if so, what has been about the cash rental value of such lands as these?

A. I don't know of any land rented for cash.

Q. If the lands in question have been in the market for sale, please state at what price they have been offered?

A. I don't as the lands have been in the market for sale.

Q. Take this farm altogether, considering its advantages as tillable and pasture lands, its water and timber, I will ask if it is not really an excellent stock farm; one of the best in the country?

A. It is a good stock farm. I have not seen all of them in the country, but have seen a good many.

Q. Should not this farm be used as a stock farm, to get anything like reasonable rents and profits therefrom?

A. It should be used as a stock farm. Can make more money off of it by raising and feeding stock.

RE-DIRECT.

Question. Is there any other land used in connection with this farm and fenced with it—*i. e.*, lands not included in the black lines on the diagram?

Answer. There is about 70 acres on the west and bordering on the Torkio, which diagonally crosses the southeast of sec. 13, and is owned, 40 acres by Mrs. E. C. Powell and the balance by one Ashby. It is wet bottom land, and used for pasture.

Q. Do you know a farm in your neighborhood called the Ramsey farm?

A. Yes; it joins the farm in controversy on one corner.

Q. When you came here, in 1876, who had charge of that farm?

A. William H. Wyley. He had charge of the Miller farm and Ramsey farm.

Q. For whom did he have charge of the Ramsey farm?

A. What he called the Lehigh Land Company.

Q. Did you know how he was in charge of the Miller farm when you came in 1876?

A. I don't know.

Q. When was it that he told you what you have related about the Lehigh Land Company?

A. He told me in the fall of the year, about the last of October, after Eli J. Seager left here for Pennsylvania, in 1876, after Seager had bought the land at sheriff's sale.

Q. Do you know whether Wyley had charge of the Miller farm under William Miller, on any of the Pennsylvania parties prior to Mr. Seager's visit here?

A. I can't tell.

Q. Please state whether any improvements in the shape of buildings have been put on the place within the last five years, except on the southeast of sec. 24; and if so, describe the improvements and give us their cost. This question was inadvertantly omitted in the examination-in-chief. [Objected to as not proper re-direct examination.]

A. We built a frame dwelling house in sec. 25, 66, 39. We built a frame dwelling house in sec. 19, 66, 38. We repaired a frame dwelling house in sec. 19, 66, 38. The house in sec. 25 cost between $350 to $400; the house in sec. 19 cost about $300; the repairing in sec. 19 cost about $160.

Q. If any buildings have been built or repaired on the southeast of sec. 24, so state and give cost.

A. Repairing dwelling house cost about $150, and digging wells and building corn cribs, etc., we expended about $200.

CROSS-EXAMINATION.

Question. Who occupies the house in sec. 25, when was it built, and how much does it really add to the value of the farm?

Answer. I live in the house. It was built in 1877. I believe it would add the value of the house to the land.

Q. Is the house worth as much now as it cost?

A. It is not.

Q. How much is it now worth?

A. About $50 less than it cost.

Q. Would this house have been necessary to the farm, had Powell attended to the management of the farm as farmers ordinarily do, instead of hunting five days in the week, and employing you as foreman, and himself acting the gentleman generally?

A. I think it was necessary to build the house for tenants to live in. I do not assent to the assumption in the question with regard to Mr. Powell.

Q. How often did you ever see Mr. Powell ploughing corn or feeding cattle?

A. I have seen him plow corn once or twice, and have seen him feed cattle quite often and hogs most all the time.

Q. When was the house built on sec. 19, how has it been cared for by the tenants, and what is it now worth?

A. Both houses on sec. 19 were built in 1876—*i. e.*, one repaired and the other built new. The new house is worth about $300, and has been well cared for. The repaired house is worth obout $140, and has been well cared for.

Q. You testify that the new house on sec. 19 cost $300 in 1876, do you mean to say that it is worth as much now as it then cost?

A. I thought I made it cost $350 originally, but it is worth $300 now.

SOLOMON D. OHL.

And I further certify that the foregoing deposition of Solomon D. Ohl was then and there, on said day and the adjournment thereof, reduced to writing by me, in the presence of the deponent, and after having been so reduced to writing, was read over to said witness and subscribed by him, in my presence and in the presence of the counsel who attended for the respective parties.

LANDON W. CAMPBELL, Notary Public.

ELI J. SEAGER, of lawful age, being produced, sworn and examined on the part of the defendants, deposeth and saith:

I reside in the city of Allentown, in the county of Lehigh, and State of Pennsylvania. I am not acquainted with the plaintiffs. I am not acquainted with William L. Patterson, one of the defendants, but I am acquainted with William Miller and Mary Miller, two of the defendants.

Question. State whether you had transactions at any time with William Miller and Mary Miller, his wife, If so, give us the date, and all of your knowledge of your business with said William Miller and Mary Miller, or either of them.

Answer. On about December, 1870, I obtained a loan for William Miller, from Jay Cooke & Co., for twenty-five thousand dollars, for which William Miller gave me a note to Jay Cooke & Co., payable to my order, and which I endorsed, and for which William Miller gave me a deed of trust, as collateral, on his land in Missouri, and Mary Miller gave me a mortgage on her property in Catasauqua, executed by her and her husband, for the sum of ten thousand dollars, also as collateral, for the endorsement of the Cooke loan. The Cooke loan of twenty-five thousand dollars was afterwards paid by and through M. H. Horn, who sold and purchased the property of Mary Miller in Catasauqua, Pennsylvania, and the "Ramsey" farm, situate in Atchison county, Missouri. The amount realized from the sale of the property in Catasauqua and the Ramsey farm was appropriated towards the payment of the Cooke note. Mr. Horn conducted these transactions. I had knowledge of them, but cannot give them in detail. Prior to the sale of the real estate mentioned Mr. Horn obtained a loan from the Penn Mutual Life Insurance Company for twelve thousand five hundred dollars, for which I or Miller gave a note, which note was secured by a mortgage of Mary Miller on her property in Catasauqua for thirteen thousand dollars. Said mortgage was given to me. The money obtained by Mr. Horn from the Penn Mutual Life Insurance Company was paid as part payment of the Cooke note.

Q. 2. How was the balance of twelve thousand five hundred dollars of the Cooke note paid, and by whom?

A. The balance was paid by Horn, out of money realized from the sale of Mary Miller's real estate. I know that the greater portion was paid in that way.

Q. 3. Whether or not William Miller owed you money; give us the amount, the date, and how he became indebted to you.

A. William Miller owed me the sum of twelve thousand dollars, on notes of his which I had endorsed and paid to the National Bank of Catasauqua, the First and Second National Banks of Allentown, and the Mocurgie Savings Bank and the Empire Trust and Savings Bank, aggregating the sum of twelve thousand dollars. I do not know the date. I paid them at different times. I think it was some time in 1872 or 1873.

Q. 4. State how you were paid this amount of twelve thousand dollars stated in your previous answer.

A. I was paid that amount by the assignment of a deed of trust dated the 10th day of November, 1873. The date of the assignment to me is the 3d day of January, 1876. The deed of trust was made and executed by Mary Miller and William Miller to William L. Patterson, in trust for Mary Miller, upon lands in Atchison county, Missouri; said deed of trust being recorded in Atchison county, Missouri, in the recorder's office, in book No. 8, page 41, on the 7th day of February, A. D. 1874. The amount of the deed is sixteen thousand dollars, and the number of acres is one thousand and eighty acres, more or less.

Q. 5. What did you do with this property after you obtained the assignment of the deed of trust?

A. I sold it after the deed of trust was due, through the sheriff of Atchison county, and bought it for between seven and eight thousand dollars, at said sale.

Q. 6. State whether the deed of trust assigned to you by Miller and wife was in good faith, and for a *bona fide* consideration. [Objected to.]

A. The deed of trust assigned to me by Mary Miller was for a *bona fide* consideration of the sum of twelve thousand dollars, due and owing to me, and was made in good faith.

CROSS-EXAMINATION.

X Question 1. You may state whether or not you paid more than twelve thousand dollars for the deed of trust.

Answer. I did not.

X Q. 2. Now, can you specify the different amounts you paid in taking up this twelve thousand dollars?

A. I cannot state the exact amount of the notes in each bank, as they were renewed from time to time, and changed from one bank to the other; but the amount actually due me was twelve thousand dollars.

X Q. 3. Can you now, by counting up that deed of trust, state amount that was due on day of the assignment?

A. Sixteen thousand dollars, with interest from the 10th day of November, 1873, the date of the deed of trust.

X Q. 4. State whether or not, at the time of purchase of the deed of trust, you paid any attention to the interest thereon?

A. I cannot say now whether I did or did not.

X Q. 5. State with whom you made the contract for the purchase of that deed of trust?

A. Both William and Mary Miller were present. The contract was made with Mary Miller, in the presence of her husband, at Kenton, Ohio.

X Q 6. How did you happen to go to Kenton, Ohio?

A. I went there to get this debt secured or paid in some shape.

X Q. 7. Had not Mr. Miller first written to you?

A. He either wrote to me or Mr. Horn.

X Q. 8. Why would he write to Mr. Horn if he owed you?

A. Because he also owed the bank of which Mr. Horn is cashier.

X Q. 9. State whether or not Mr. Miller and wife had not sold the land upon which this deed of trust was given to a Mr. Horn and a Mr. Weaver prior to the time of the assignment of the deed of trust to you.

A. I do not know whether it was before or after, but it was about the same time, I judge.

X Q. 10. State whether or not your purchase of the deed trust and the purchase by Horn and Weaver of the land are not one and the same transaction, and whether you are not now all three interested as owners in this land.

A. The purchase of deed of trust and the purchase of the land were made at the same time, I think, and all are owners under the sale, but in different interests, and other parties are interested besides us.

X Q. 11. State whether or not the property is not now owned or claimed by a company known as the Lehigh Land Company.

A. That's so; and I am a member of that company, and as such I am in possession of the land through our agent. There is no corporation, but Mr. Horn acts as secretary. E. F. Powell has charge of the said land for the Lehigh Land Company.

X Q. 12. State, if you know, the consideration paid by Horn and Weaver for that land.

A. I do not recollect it now, but the deeds will show.

X Q. 13. State whether or not the twelve thousand dollars you paid for the deed of trust was not included in the purchase money for the land?

A. It did. That twelve thousand dollars was put in as my interest in that purchase, and went to make up its part of the whole consideration.

X Q. 14. State, if you know, the other items of this consideration, outside of this twelve thousand dollars.

A. I do not know them sufficiently well to make a statement, but he, Miller, owed Horn, Weaver and Seager, and the National Bank of Catasauqua a sum which was part of the consideration.

X Q. 15. State whether or not anything was reserved to meet the contingency of a judgment that might be obtained by Bean & Alsop vs. William Miller, and for which the land at the time was attached.

A. There was a reservation for imperfect title or attachment, or whatever it might be, amounting to between five and six thousand dollars. It was not more than sixteen thousand dollars. I am satisfied it did not exceed six thousand dollars.

X Q. 16. You may state whether or not, prior to that time, you ever purchased any interest or liens against the lands described in the deed of trust.

A. Unless this deed of trust, taking before to secure the Cooke loan, might be so considered, I answer no.

X Q. 17. You may state whether or not, at the time of this purchase, anything was said about a mortgage in favor of one Herman Koontz, of Omaha, which had been foreclosed against said land.

A. I was not present when the sale was finally made, nor when the arrangements were made for the sale, nor present when the mortgage was assigned to me on the record.

X Q. 18. State whether or not, at the time of this purchase you paid any money to Mr. Miller, or paid any money for him to his creditors.

A. Actually I do not know, but there was some money paid afterwards, but I do not know how or when. These transactions were made by Horn and Weaver.

X Q. 19. You may state whether or not the money reserved was not used in part to pay off the Herman Koontz mortgage or judgment.

A. I do not know, but think not.

X Q. 20. You state then you do not know when the Herman Koontz judgment was assigned to you?

A. I do not know when it was assigned, but it was assigned to me.

X Q. 21. How much did you pay for the Herman Koontz judgment?

A. I do not know, but I suppose the full amount. I do not recollect the amount; it was between two and three thousand dollars.

X Q. 22. Of whom did you purchase it?

A. The purchase was made by Mr. Horn, and I think it was purchased from Patterson; I am not sure.

X Q. 23. State whether the purchase was made to protect the common title of the Lehigh Land Company or for your individual benefit, which?

A. The judgment was a lien upon these lands, and was paid for out of joint money of the company.

X Q. 24. You may state whether or not you did not know, at the time of the purchase, that this Koontz judgment was against the land?

A. I did not; or if I did know it at the time, I have forgotten it.

X Q. 25. You may state whether or not the amount paid for the Koontz judgment was in addition to the original consideration?

A. I cannot positively say, but I don't think it was. I think it was included in the original consideration.

X Q. 26. You may state whether or not this same Lehigh Land Company were the purchasers of what was known as the Ramsey farm?

A. They were not. The purchasers of the Ramsey farm were Horn, Seager and Weaver.

X Q. 27. State whether or not you have since sold the Ramsey farm.

A. We have since sold it.

X Q. 28. You may state for how much Mr. Horn sold Mrs. Miller's property in Catasauqua.

A. I was told one property sold for six and the other for eight thousand dollars.

X Q. 29. What kind of property was this, and who were the purchasers?

A. The one sold for $6,000 was a large lot on Bridge street, and the one for $8,000 was a house and lot on Second street, Catasauqua, and was sold to Oliver Williams. The $6,000 lot was sold to M. H. Horn, and perhaps others.

X Q. 30. On which property was it that Mr. Horn obtained the loan of $12,500 from Penn Mutual Life Insurance Company?

A. I think it was on these two properties in Catasauqua, and perhaps others. I think the time of the loan from the Penn Mutual was about the first of September, 1871.

X Q. 31. Did you know, at the time of the loan, what the money was borrowed for?

A. It was got to pay a portion of the Cooke note.

X Q. 32. You may state now how much was remaining due on the Cooke note after the payment of this $12,500, and how was it paid?

A. Twelve thousand five hundred dollars was due, but I don't know how the balance was paid. Mr. Horn made these transactions. I am not certain; there may have been other money paid at the same time.

X Q. 33. You may state whether or not Mr. Miller resided here at the time of these transactions.

A. Mr. Miller resided at Kenton, Ohio.

X Q. 34. State whether Mr. Miller resided here, and whether he owned any property of his own here.

A. He owned one property of his own here that I know of —the "Zehner" lot; and may have owned others. He did reside in Catasauqua. I think the Zehner lot was sold for three thousand dollars.

X Q. 35. State if you know of William Miller owning any other property anywhere besides the Zehner property and the property sold to the Lehigh Land Company in Atchison county, Missouri.

A. I don't know of any. He did own a property in Omaha, Nebraska. He was in the store business here, and contracting. He had the usual country store of dry goods and groceries.

X Q. 36. State whether if you know you ever heard Mr. Miller speak of owning a large farm in Illinois.

A. I think I heard him say he owned lands in Illinois, in Bureau county. I could not say how long ago he said this; perhaps five or six years ago.

X. Q. 37. You may state whether or not you ever heard him say how much profits he had made out of his Pacific railroad contracts.

A. It seems to me that he estimated his profits at about one hundred thousand dollars.

X Q. 38. For what purpose did Mr. Miller borrow the $25,000 from Jay Cooke & Co.?

A. I think it was for payment on these lands and live stock. I think Mr. Miller drew the whole of the $25,000 and used it himself.

X Q. 39. On whose property did Mr. Miller reside when living in Catasauqua, his own or his wife's?

A. I do not know.

X Q. 40. What, if you know, was Mrs. Miller's maiden name, and are either Mr. Horn, Mr. Weaver, yourself, or any of the Lehigh Land Co., related to either her or Mr. Miller by blood or marriage?

A. Mrs. Miller's maiden name was Mary McKee. None of the parties named in the question are related to either Miller or his wife by blood or marriage.

X Q. 41. State whether or not Mr. Miller now has any share or interest in the Lehigh Land Co., and whether or not he was instrumental in naming and getting up the company. [Objected to as incompetent, irrelevant.]

A. He has no share or interest in the Lehigh Land Co. He had nothing to do with the getting up of that company.

X Q. 42. What lands, if any, did Mary Miller own besides the lands already mentioned, and from what source did she obtain her several properties?

A. I don't know of any other lands, or from what source.

X Q. 43. You may state, if you know, when this $12,500 loan from the Penn Mutual Life Ins. Co. was paid, and by whom.

A. One payment of $8,000 was made from the sale of Mrs. Miller's property to Williams by Mr. Horn, when the loan became due, I think, and the balance I don't know when it was paid.

X Q. 44. You may state whether or not, at the time of the purchasing the "Ramsey" farm, in Missouri, by yourself, Mr. Horn and Weaver, you paid any money or took up any indebtedness to yourselves.

A. My recollection is that $5,000 of that was paid in cash on the Cooke claim and $6,000 by one hundred shares of stock of the Allentown Rolling Mill Co., which was afterwards sold and $5,000 of it applied to the same Cooke debt. I may be wrong, but that is my impression. The amount paid for the Ramsey farm was eleven thousand dollars, no matter what the deed shows.

X Q. 45. You state, I believe, that you took a deed of trust of $25,000 from William Miller, of lands in Missouri, and a mortgage upon properties in Catasauqua of Mrs. Miller, for $10,000, both to secure yourself as an endorser on the Jay Cooke & Co. note. You also state that you afterwards took a mortgage of $13,000 upon some property of Mrs. Miller in Catasauqua, Pennsylvania, to secure you as endorser or maker of $12,500 to the Penn Mutual Life Ins. Co. I ask you if all these transactions have reference to the one Jay Cooke & Co. loan and its satisfaction?

A. They have.

X Q. 46. You may state whether or not the amount realized from the sale of the two properties of Mrs. Miller mentioned, in Catasauqua, was not all the money furnished by Mrs. Miller to Mr. Miller for any purpose whatever, so far as you are informed.

A. That, with the addition of the amount received from the sale of the Ramsey farm, which was in her name, was all that I recollect that she furnished.

X Q. 47. State, if you know, where Mr. Miller obtained the money to purchase the Ramsey farm in his wife's name.

A. I do not know.

X Q. 48. You may state who are the different parties interested in the Lehigh Land Co., and in whose names is the title to the land held? [Objected to as incompetent and irrelevant.]

A. M. H. Horn, V. W. Weaver, Nat. Bank of Catasauqua, W. B. Powell & Son and myself. The title is in myself for a part, and Horn and Weaver for the other part.

X Q. 49. The title of Horn and Weaver is not antagonistic to your own?

A. I think not.

X Q. 50. State whether or not, at the time of this purchase of this 1,080-acre tract, and the assignment of the deed of trust, you were not aware of the attachment suit of Bean & Alsop.

A. I was aware of an attachment having been issued by some parties, and Mr. Miller stated that he owed them nothing. It was for this and imperfect titles generally, that we reserved the $5,000 or $6,000.

X Q. 51. State whether or not you had notice at the time of purchasing the deed of trust that the land was attached by Bean & Alsop.

A. I think there was notice given on the day of sale.

RE-DIRECT.

Question 1. Do you know where the original deeds to Mrs. Miller for her Catasauqua property now are? Are they in your possession or under your control?

Answer. I think one of the deeds is in the hands of M. H. Horn. They are not in my possession or under my control.

Q. 2. You have stated that William Miller's land covered by the deed of trust dated November 10th, 1873, assigned to you by Mrs. Miller January 3d, 1876, was sold under legal proceedings upon said deed by the sheriff of Atchison county, Missouri, and purchased by you. State where and when the sale took place, and whether or not John P. Lewis, Esq., was present and bid at the sale.

A. It was sold at the court house in Rock Port, Atchison county, Missouri, on the day named in the advertisement, the date of which I cannot state. I bought it. Mr. Lewis was present and bid on all the properties. It was sold in parcels, and Mr. Lewis gave the notice before referred to.

ELI J. SEAGER.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] R. CLAY HAMMERSLY, Notary Public.

MELCHOR H. HORN, of lawful age, being produced, affirmed and examined on the part of the defendant, deposeth and saith:

I reside at Catasauqua, Pennsylvania, and I am cashier of the National Bank of Catasauqua. I am not acquainted with Bean & Alsop, the plaintiffs, but I am acquainted with all the defendants.

Question 1. State whether or not you had transactions of a business character with William Miller and Mary, his wife. If so, give us the date and character of the transactions with said Miller and wife, or either of them.

Answer. On or about December the 1st, 1871, I negotiated a loan for William Miller, with the Penn Mutual Life Insurance Company, of Philadelphia, for $12,500. The proceeds of this loan was obtained for William Miller for the purpose of paying on a debt due to Jay Cooke & Co. by William Miller. The debt due Jay Cooke & Co. was $25,000. The net proceeds of the Penn Mutual loan was $11,747.15. I think it passed through my hands on the 5th day of January, 1872. Horn, V. W. Weaver and Eli J. Seager (when I say Horn I mean myself) purchased from Mary Miller, wife of William Miller, her farm in Atchison county, Missouri, known as the Ramsey farm, and paid to the husband, William Miller, by depositing at his credit in the National Bank of Catasanqua, $5,000, this amount being a part of the purchase money of said farm; and on May 4th, 1872, discounted for his credit $5,000, proceeds of notes given for $6,000 of the stock of the Allentown Rolling Mill Company, said stock having paid to William Miller on account of the purchase money of this farm. The proceeds of the notes was $5,000. This was all the money that William Miller received. The consideration actually paid for the purchase of the farm was $11,000, which was all paid to William Miller. Miller realized but $10,000, having lost $1,000 an the sale of Rolling Mill stock. The consideration named in the deed is $15,500, but the sum actually paid was $11,000. These amounts were paid to William Miller, on his checks or notes falling due, at the National Bank of Catasauqua. In April, 1873, I sold, by direction of Mary Miller, wife of William Miller, her house and lot on Second street, Catasauqua, known as the Kuntz property, to Oliver Williams, for the sum of $8,000. On the 28th day of April, 1873, I paid the said $8,000 received from Williams to the Penn Mutual Insurance Company, of Philadelphia, as a part payment on the $12,500 debt of William Miller, her husband. On the 23d day of May, 1873, I purchased from Mary Miller, wife of William Miller, her lot of ground situated on the corner of Bridge and Third streets, Catasauqua, known as the Thomas lot, for $6,000, and at the same date purchased from William Miller his house and lot on Second street, in the borough of Catasauqua, and known as the Zehner property, for ($3,000) three thousand dollars. On June 14, 1873, I deposited to the credit of the said William Miller, at the National Bank of Catasauqua, $4,000, in part of the aforesaid purchase money; and on July 1st, 1873, I paid to the Penn Mutual Insurance Company of Philadelphia $4,523.07, this amount being the balance of said insurance company's claim against William Miller, this sum being the balance of the purchase money for said lots of Mrs. Miller and Mr. Miller. The consideration in deed of the Thomas lot was $6,000. I only paid $5,500, which was the real consideration paid therefor. I have a statement in writing of the amount of money realized from the purchase and sales of Mary Miller's property in Missouri and Catasauqua, Pennsylvania, and used for the benefit of William Miller, her husband. [Statement produced and marked "Exhibit A."]

Q. 2. Do you know where the original deeds to Mrs. Mary Miller for her Catasauqua property and her Ramsey, Missouri, land now are? If you have them in your possession, produce them.

A. I have the deed of George R. Ramsey to Mary Miller for what is called the Ramsey farm in Atchison county, Missouri, which is recorded in Atchison county, Missouri, in book 14, at page 402. (It is agreed between the parties that the record of the deed may be read in evidence in place of the original deed.) I have also the deed of David Thomas and wife to Mary Miller for what is known as the Thomas lot in Catasauqua. Recorded in the office for recording of deeds at Allentown, in and for the the county of Lehigh, in book vol. 37, page 105, etc. Deed dated the 9th day of November, 1865; consideration $850. [A copy of this deed is, by agreement of parties, filed and marked "Exhibit B."] And also of M. H. Horn and wife to Mary Miller, dated the 26th day of February, 1866; consideration is $12,000. Recorded at same place, vol. 37, page 108, etc. [A copy of this deed is, by agreement of parties, filed and marked "Exhibit C."] And also deed of John Zehner and Eliza, his wife, to William Miller, dated the 11th day of April, 1871, consideration $3,300, recorded in same place, vol. 43, page 566. [A copy of this deed is, by agreement of parties, filed and marked "Exhibit D."] And also deed of William Miller and wife to Melchor H. Horn, dated May 23d, 1873, consideration $9,000, which includes the Zehner and Thomas properties, and the consideration paid was $8,500. Recorded in vol. 48, page 610, etc. [A copy of this deed is, by agreement, filed and marked "Exhibit E." It is further agreed that exhibits "A," "B," "C," "D" and "E," may be read on the trial of this cause the same as if they were the original deeds.] I have not control of the original deeds of John W. Kuntz and wife to Mary Miller, nor of the deed of Mary Miller and William Miller to Oliver Williams. They are not in my possession, and I do not know where they are; but I have certified copies of both deeds from the recorder of Lehigh county, which are marked in the order named as "F" and "G" respectively. (And filed as evidence by agreement.)

CROSS-EXAMINATION.

X Question 1. You may state for what uses the deposits made in favor of William Miller in the Catasauqua Bank, and which were derived from the sale of Mrs. Miller's lands, were applied.

Answer. They were applied to the payment of checks drawn by Miller, and for the payment of his notes falling due at the bank. I cannot tell which notes were paid without looking at the books of the bank, and cannot tell as they were his notes, and we do not keep an account of the payee's name of business notes payable at our bank.

X Q. 2. State how much was consumed in paying his notes at your bank.

A. I now have discount check book, which exhibits the discount of the Rolling Mill note referred to in my examination-in-chief, which shows that a discount check was issued to William Miller May 4th, 1872, for $4,920. I do not know what he did with it. At the time I deposited the $4,000 to William Miller's credit, it required $2,343.07 to make his account good or pay his own drafts in the bank. After depositing the $4,000, there was a balance due him of $1,656.93. On the 17th day of June, 1873, his account is charged with his note to Blumer & Co. for $1,560, and the balance was drawn out by various checks. At the time of depositing the first $5,000 on account of the Ramsey farm Miller drew $4,000 on his own check; on the same day he obtained a draft on some city institution for $261.37, for which he drew his check on us. On February 13 following he obtained a draft and cash amounting to $500. On June 24, 1872, $3,544.62 was drawn in same manner, for the benefit of Jay Cooke & Co. On the 26th of the same month paid the First National Bank of Allentown, for his benefit, the sum $1,500. February 16, 1872, Miller obtained a draft on his check for $2,945. This a running account in ledger of William Miller in the National Bank of Catasauqua, in which deposits were made at various times, and on which checks drawn and notes charged at different times.

X Q. 3. You may state the entire amount of debits and credits of William Miller's account on the books of the National Bank of Catasauqua, between December 6, 1870, and July 12, 1872, and of the amounts from that date to this.

A. Debits July 12, 1872, $41,861.25, and credits $40,628.88, and since July 12, 1872, to January 14, 1876: debits $98,701.03, credits to same time $99,933.40. These last debits do not include those given before. We have no business transactions, that I am aware of, with William Miller, since January 14, 1876.

X Q. 4. From what sources did Mr. Miller derive the large credits made to his account since July 12, 1872 ?

A. From discounts of notes, accommodation and business notes, except a mortgage for E. G. Reeves for $1,770.81, a mortgage of Leslie Miller for $2,193.20.

X Q. 5. State whether or not you know, of your own knowledge or from Mr. Miller, how the balance was paid on the Jay Cooke & Co. note.

A. I do not.

X Q. 6. State if you know from what source the money was derived with which Mrs. Miller's property was purchased in her own name in Catasauqua.

A. I don't know anything about it. I have no knowledge.

X Q. 6. State whether or not Mr. Miller and his wife were married when you first knew them.

A. They were.

X Q. 7. In what business was Mr. Miller engaged from the time of your acquaintance with him up to January, 1876 ?

A. He was a merchant in Catasauqua in 1857; I can tell for how long, but quite a number of years after 1857. He then contracted for the raising of ore; I don't know how long he was engaged in that business. He then was a contractor on the Lehigh & Susquehannah railroad, on the building of the road; and afterwards he was a contractor on the Union Pacific railroad. I think this was about 1868; I am not certain.

X Q. 8. State what was Mr. Miller's financial condition from 1857 to 1874.

A. As far as my knowledge goes he was in fair circumstances here as a merchant. I think he was successful with his work on the Lehigh & Susquehannah R. R., and very successful with his contracts on the Union Pacific. I don't know, after he left the Union Pacific, anything about his finances nor circumstances.

X Q. 9. You may state who it was that wrote to you to sell Mrs. Miller's property in Catasauqua, Mrs. Miller or Mr. Miller ?

A. I am not certain whether they wrote to me or whether they told me to sell it, as they were both here at that or about that time. The proceeds of the sale of her property, except so far as I paid part thereof to the Penn Mutual Insurance Company, were deposited to Mr. Miller's general bank account.

X Q. 10. State if you know of Mrs. Miller's having any other property than the Ramsey farm, Missouri, and the two properties mentioned in Catasauqua.

A. I only know by hearsay.

X Q. 11. State whether or not you know, from your own knowledge or from Mr. Miller, of his having other property than that mentioned above, from 1868 to 1872.

A. I know of his having owned the Atchison county farm. I have heard that he or she owned property in Omaha.

X Q. 12. State whether or not Mr. Valentine W. Weaver, Eli J. Seager and yourself, on behalf of yourselves, and on behalf of a company known as the Lehigh Land Company, did not, about the month of January, 1876, purchase of William Miller a farm in Atchison county, Missouri, consisting of between ten and eleven hundred acres of land, formerly known as the "Wood and Miller" farm. If so, state the time and terms of said purchase. [Objected to as incompetent and irrelevant, so far as the same relates to the Lehigh Land Company.]

A. On the 3d day of January, 1876, Valentine W. Weaver, Melchor H. Horn (myself) purchased of William Miller a farm in Atchison county, Mo., containing about ten hundred and eighty acres of land, said purchase made for ourselves and others, to be arranged thereafter. At that time the name of Lehigh Land Company was not known or thought of. There was no such company. Consideration named in the deed is $36,400; forty acres of land is in Nodaway county, Mo., in addition to the 1,080 acres above mentioned, all described in same deed. The parties originally interested in the purchase of this land were Valentine W. Weaver, Eli J. Seager, myself and the National Bank of Catasauqua, and since the purchase W. B. Powell & Son have become interested with us.

X Q. 13. You may state the different items, as near as you can, that went to make up the consideration for this land.

A. Debt of William Miller to Horn, Weaver, Seager, about $3,000; debt due to the National Bank of Catasauqua, about $6,000; debt due Eli J. Seager, about $12,000; William Miller's notes, about $8,000; note of William Miller to A. Enigh, about $1,500; claim of Van Syckle against W. Miller, about $700; and claims Koontz and Patterson, about $4,000—about $2,000 each, I think. A reservation in the payments was made of about $6,200, until all liens or incumbrances of whatsoever kind might be removed from the property. It was found, when the transaction was completed, that the sum reserved was less than $6,000.

X Q. 14. State whether or not the conveyance of this land to you and Weaver, and the assignment of the deed of trust to Mr. Seager, was not intended to operate as one conveyance of the entire interest of both Mr. and Mrs. Miller in these lands.

A. I can't say as to the deed of trust, as to the deed to myself, Weaver, it was understood at the time that Mr. Seager was to have an interest at the land. Our interests and Mr. Seager's are not antagonistic.

X Q. 15. State whether or not the purchase made under the trust deed was made for the interest of all and not for Mr. Seager's benefit alone.

A. I can't tell what his ideas were about it, but as he put his own claim in here, it was understood that the purchase was for the benefit of all.

X Q. 16. State, as near as you can, what the different items of indebtedness were for that went to make up the consideration for this land.

A. The debt of Horn, Weaver and Seager was for rent due them by Miller for the Ramsey farm. The debt of the National Bank of Catasauqua, I do not know whether it was for notes or overdrafts. The items of Mr. Seager I cannot give without referring to accounts not under my control. William Miller's two notes for $3,000, I cannot say what for. Mr. Enigh's note for $1,500 was paid to him, by us, for William Miller. The $700 was a claim of Van Syckle entered against the farm, and these Patterson claims, I think the one was a Koontz claim, and the other a Patterson. I can tell in what shape they were in. We have paid all these claims so far as I know. I do not know whether Mr. Seager has delivered up his claims or not. Mr. Miller was pretty short, and I think the claims were all paid before the deed was delivered. I paid the Van Syckle claim and the Patterson claim to the parties themselves in cash. The money for these claims never passed through Mr. Miller's hands.

X Q. 17. At what time, if ever, did you procure from Joseph M. Patterson an assignment of the Koontz judgment, and at whose suggestion?

A. I can tell you of the time; it was about the time of the purchase of this land. It was at my own suggestion, I think, as was interested and had the fixing of the thing up.

X Q. 18. What was the object in having this assigned to you if you were to pay it as part of the consideration?

A. I don't know. The assignment was made to Eli J. Seager, and to be held for any emergency.

X Q. 19. State whether or not the assignment was not made for the benefit of all persons interested in the purchase of said lands—yourself, Mr. Seager and Weaver included.

A. I presume it was.

X Q. 20. State when that assignment was sent to Atchison county to be attached to the judgment record in that case.

A. I don't know. Can't tell how it got there. I did not know, at the time of the purchase, that the Mary Miller deed of trust did not cover all of the land.

X Q. 21. State whether or not the assignment of this Koontz judgment and the assignment of this deed of trust were not made to defeat, if possible, the attachment of Messrs. Bean & Alsop.

A. I don't think I heard of such attachment at that time, and if they were assigned for that purpose I don't think I had knowledge of it.

X Q. 22. Why, then, did you retain this reservation of nearly $6,000?

A. I was informed that a suit was pending against Miller by some parties,—I don't know whether it was Bean & Alsop or not;

and having had some difficulty in the title papers for some of the sections, the reservation was made to cover any losses for correcting the title papers, and on the suit I had heard of. We either had the title examined or examined the title ourselves before finally completing the trade, and we were not certain then it was correct.

X Q. 23. You may state whether or not the assignment of this deed of trust and the Koontz judgment were not made for the purpose of protecting your title from the suit you had heard of.

A. I can't say that the assignment of the deed of trust was made for that purpose, but it represented the amount—to-wit, $12,000—which Mr. Seager had furnished towards the purchase money for the land. The assignment of the other, I have said, was to meet contingencies.

X Q. 24. State who have had charge and control of this farm since January, 1876.

A. First Wm. Miller had charge of it for the owners, and then E. F. Powell had charge of it for the benefit of all parties interested.

X Q. 25. You may state with whom you made the contract for the Catasauqua property which you sold to Mrs. Miller.

A. That property was originally sold by David Thomas to William Miller, and William Miller and wife conveyed to me, and re-conveyed it to Mrs. Miller. Consideration in the deed is the same as that in deed of David Thomas to William Miller. No money passed through my hands. Part of the Thomas property was conveyed to Mrs. Miller direct. No reason was given at the time for the conveying this property to Mrs. Miller through me. I simply acted as trustee for the purpose of getting the title in Mrs. Miller.

X Q. 26. State whether or not you were acquainted with the McKee family into which Mr. Miller married.

A. I was acquainted with part of the family. I do not whether Mrs. Miller derived anything from her parents' estate.

It is agreed that the deed of trust of William Miller to William L. Patterson, in trust for Mary Miller, dated November 10, 1873, and the assignment by Mary Miller and William Miller to Eli J. Seager, dated January 3, 1876, and the acceptance of the continuance of the trust for Eli J. Seager, by William L. Patterson, on the 3d day of January, A. D. 1876, be used evidence in the trial of this cause, with filing the original or copies thereof, but that the record of the same in the recorder's offiee in Atchison county, Missouri, be used the same as if the original was produced.

M. H. HORN.

Subscribed and affirmed to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] R. CLAY HAMMERSLEY, Notary Public.

Exhibit A.

Statement of amounts derived from the purchase and sales of Mary Miller's property in Missouri, and Catasauqua, Pennsylvania, and used for the benefit of William Miller:

January 5th, 1872. From Ramsey farm sale, in cash from Ramsey farm sale, proceeds of $6,000	$ 5,000
May 4, 1872. Allentown Rolling Mill stock	5,000
From house and lot on Second street, in the borough of Catasauqua, April 28th, 1873	8,000
From lot corner of Bridge and Second street, in the borough of Catasauqua, about the 14th of June, 1873	5,500
	$23,500

This amount was appropriated as follows, to-wit:

Deposited at William Miller's credit, January 5th, 1872, in National Bank of Catasauqua	$ 5,000
Discounted for William Miller's credit, May 4th, 1872, in National Bank of Catasauqua	5,000
Paid to the Penn Mutual Insurance Company, April 28, 1873, of Philadelphia, for William Miller	8,000
Deposited at William Miller's credit, June 14, 1873, in National Bank of Catasauqua	1,000
Paid to the Penn Mutual Insurance Company, July 1, 1873, of Philadelphia, for William Miller	4,500
	$23,500

Exhibit B.

This indenture, made the 9th day of November, in the year of our Lord one thousand eight hundred and sixty-five, between David Thomas, of the borough of Catasauqua, in the county of Lehigh, and commonwealth of Pennsylvania, and Elizabeth, his wife, of the first part, and Mary Miller, of the same place, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of eighty hundred and ~~forty~~ fifty dollars, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm, unto the said party of the second part, his heirs and assigns, all that certain lot or piece of ground situate in the said borough of Catasauqua, beginning at the corner of Third street and lot lately conveyed to William Miller; thence along said Third street north thirty-three and one-half degrees west sixty feet to other lands of said David Thomas; thence along said lands forty-six and one-half degrees east one hundred and eighty feet to a twenty-feet-wide alley;

thence along said alley south forty-three and one-half degrees east sixty feet to the corner of said Miller's lot; thence along said lot one hundred and eighty feet to the place of beginning, and is part of the same land and premises which John Peter and wife, by indenture bearing date the 13th day of March, A. D. 1850, recorded in the office for the recording of deeds at Allentown, in and for said county of Lehigh, in deed book volume 14, page 349, granted and confirmed unto the said David Thomas, his heirs and assigns in fee.

Together with all and singular the improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining; and the reversions and remainders, rents, issues and profits thereof, and all the estate right, title, interest, property claim and demand whatsoever, of them, the said parties of the first part, in law, equity or otherwise howsoever, of, in, to or out of the same, and every part or parcel thereof. To have and to hold the said lot or piece of ground, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances, unto the said part of the second party, his heirs and assigns, to and for the only proper use and behoof of the said part of the second part, his heirs and assigns, forever. And the said David Thomas, for himself, his heirs, executors and administrators, doth by these presents covenant, grant and agree to and with the said part of the second part, his heirs and assigns, that the said parties of the first part, their heirs, all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said parties of the first part, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, dated the day and year first above written.

DAVID THOMAS. [SEAL.]
ELIZABETH THOMAS. [SEAL.]

Sealed and delivered in the presence of

R. CLAY HAMMERSLEY.

Received the day of the date of the within and foregoing indenture, of the within named Mary Miller, the sum of eight hundred and fifty dollars in full.

DAVID THOMAS.

Attest: R. CLAY HAMMERSLEY.

Acknowledged November 9th, 1865.
Entered April 6th, 1868.

EXHIBIT C.

This indenture, made the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and sixty-six, between M. H. Horn, of the borough of Catasauqua, in the county of Lehigh, and State of Pennsylvania, and Matilda L., his wife, of the one part, and Mrs. Mary Miller, wife of William Miller, of the borough of Catasauqua, county and State aforesaid, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of one thousand two hundred dollars, lawful money of the United States of America, unto them well and truly paid by the said part of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, her heirs and assigns, all that certain lot or piece of ground, situate in the said borough of Catasauqua, beginning at a post the corner of Bridge street and Third street; thence along said Third street north forty-three and one-half degrees west sixty feet (60 ft.) to a post a corner of other lands of the said Mary Miller; thence by the same north forty-six and a half degrees east one hundred and eighty feet (180 ft.) to a post on line of Church alley; thence along said alley south forty-three and a half degrees east one hundred and eight feet (108 ft.) to a post on line of said Bridge street; thence along said Bridge street south sixty-one and a half degrees west one hundred and eighty-six feet (186 ft.) to the place of beginning; (it being the same premises which David Thomas and wife, by indenture dated the 20th day of February, A. D. 1864, recorded in the office for the recording of deeds, at Allentown, in and for said county of Lehigh, in deed book vol. 29, page 527, etc., granted and confirmed unto William Miller, his heirs and assigns in fee, and the same premises which William Miller and wife, by indenture dated the 24th day of February, A. D. 1866, which deed is not yet recorded, granted and confirmed unto the said M. H. Horn, his heirs and assigns in fee.)

Together with all and singular the buildings, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of them, the said parties of the fiart part, in law, equity or otherwise howsoever of, in, to or out of the same and every part or parcel thereof. To have and to hold the said lot or piece of ground, hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, to and for the only proper use and behoof of the said party of the second part, her heirs and assigns forever. And the said M. H. Horn, for himself, his heirs, executors and administrators, doth by these presents, covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that he, the said party of the first part, his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, against him, the said party of the first part, his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, dated the day and year first above written.

M. H. HORN. [SEAL.]
MATILDA L. HORN. [SEAL.]

Sealed and delivered in presence of
R. CLAY HAMMERSLEY.

Received the day of the date of the within or foregoing indenture, of the within named Mrs. Mary Miller, the sum of one thousand two hundred dollars, it being the consideration above mentioned in full.
M. H. HORN.

Attest: R. CLAY HAMMERSLEY.

Acknowledged February 26th, 1866.

Entered April 6, 1868.

EXHIBIT D.

This indenture, made the 11th day of April, in the year of our Lord one thousand eight hundred and seventy-one, between John Zehner, of the borough of Catasauqua, in the county of Lehigh, and State of Pennsylvania, and Eliza McKee Zehner, his wife, of the first part, and William Miller, of the city of Omaha, and State of Nebraska, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of thirty-three hundred dollars, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, efeoff, release and confirm, unto the said party of the second part, his heirs and assigns, all that certain lot or piece of ground situate on second street, in said borough of Catasauqua, bounded and described as follows, to-wit: Beginning at a curb stone in said Second street, adjoining land of William

Hock; thence along said street south forty-five degrees east fifty-eight feet to Liberty alley; thence along said alley south forty-five degrees west one hundred and ninety-four feet to Railroad alley; thence along said alley north forty-five degrees west fifty-eight feet to land of said William Hock's, and thence along the same north forty-five degrees east one hundred and ninety-four feet to the place of beginning; containing eleven thousand two hundred and fifty-two square feet. (It being the same premises which David Thomas and wife, by indenture dated the seventh day of May, A. D. 1868, for the consideration therein mentioned, granted and confirmed unto the said Eliza McKee (now Kehner) her heirs and assigns forever, as in and by the said in part recited indenture, recorded in the office for the recording of deeds, at Allentown, in and for the county of Lehigh, in deed book vol. 38, page 249, etc.) Together with all and singular the buildings, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of them the said parties of the first part, in law, equity or otherwise howsoever, of, in, to or out of the same and every part or parcel thereof. To have and to hold the said lot or piece of ground, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of the said party of the second part, his heirs and assigns forever. And the said John Zehner and Eliza McKee Zehner, his wife, for themselves, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, all and singular, the hereditaments and premises herein above described and granted or mentioned, and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them, the said parties of the first part, their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under him, them or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, dated the day and year first above written.

JOHN W. ZEHNER, [SEAL.]
ELIZA McKEE ZEHNER. [SEAL.]

Sealed and delivered in presence of

JOSHUA STOPLER.

Received the day of the date of the within or foregoing indenture, of the within named William Miller, the sum of thirty-two hundred dollars in full of the consideration money therein mentioned.

JOHN W. ZEHNER.
ELIZA McKEE ZEHNER.

Attest: JOSHUA STOPLER.
Acknowledged April 11th, 1871.
Entered April 18th, 1871.

EXHIBIT E.

This indenture, made the twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-three, between William Miller, of the city of Saint Joseph, in the county of Buchanan, in the State of Missouri, and Mary, his wife, of the first part, and Melchor H. Horn, of the borough of Catasauqua, in the county of Lehigh, and State of Pennsylvania, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of nine thousand dollars, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfoeffed, released and confirmed, and, by these presents, do grant, bargain, sell, alien, enfoeff, release and confirm unto the said party of the second part, his heirs and assigns, all that certain lot or piece of ground, situate in said borough of Catasauqua, beginning at the corner of Third street and lot hereinafter mentioned; thence along said Third street north forty-three and a half degrees west sixty feet to lands of David Thomas; thence along said lands forty-six and one-half degrees east one hundred and eighty feet to a twenty feet wide alley; thence along said alley south forty-three and one half degrees east sixty feet to said hereinafter described lot; thence along said lot one hundred and eighty feet to the place of beginning; (it being the same premises which David Thomas and wife, by indenture dated the ninth day of November, A. D. 1865, for the consideration therein mentioned, granted and confirmed unto the said Mary Miller, her heirs and assigns, forever, recorded in the office for the recording of deeds at Allentown, in and for the county of Lehigh, in deed book vol. 37, page 105, etc.)

And also all that certain lot or piece of ground, situate in the borough of Catasauqua aforesaid, beginning at a post the corner of Bridge and Third streets; thence along said Third street north forty-three and one-half degrees west sixty feet to corner of lot hereinbefore described; thence by the same north forty-six and a half degrees east one hundred and eighty feet to a post on corner of Church alley; thence along said alley south forty-three and a half degrees east one hundred and eight feet to a post on line of Bridge street; thence along said Bridge street south sixty-one and a half degrees west one hundred and eighty-six feet to the place of beginning; (it being the same premises which the said M. H. Horn and wife, by indenture dated the 26th day of February, A. D. 1866, for the consideration therein mentioned, granted and confirmed unto the said Mary Miller, her heirs and assigns, forever; recorded at Allentown, in vol. 37, page 108, etc.; reference, etc.)

And also all that certain messuage or tenement and lot or piece of ground, situate on Second street, in said borough of Catasauqua, bounded and described as follows: Beginning at a curbstone on said Second street adjoining land of William Hoch; thence along said street south forty-five degrees east fifty-eight feet to Liberty alley; thence along said alley south forty-five degrees west fifty-eight feet to lands of said William Hoch, and thence along the same north forty-five degrees east one hundred and ninety-four feet to the place of beginning, containing eleven thousand two hundred and fifty-two square feet; (it being the same premises which John Zehner and wife, by deed dated the eleventh day of April, A. D. 1871, for the consideration therein mentioned, granted and confirmed unto the said William Miller, his heirs and assigns, forever; recorded at Allentown, in and for the county of Lehigh, in deed book vol. 43, page 566; reference, etc.)

Together with all and singular the buildings, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate right, title, interest, property claim and demand whatsoever of them the said parties of the first part, in law, equity or otherwise howsoever, of, in, to or out of the same, and every part or parcel thereof; to have and to hold the said above-described lots or pieces of ground, hereditaments and premises hereby granted or mentioned or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of the said party of the second part, his heirs and assigns, forever.

And the said William Miller and Mary, his wife, for their selves, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said party of the first part, his heirs, all and singular the hereditaments and premises herein above described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said parties of the first part, their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from or under him, them or any of them, shall and will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, dated the day and year first above written.

WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Sealed and delivered in the presence of

HERSCHEL BARTLETT.
DAVID L. BARTLETT.

Received the day of the date of the within or foregoing indentnre, of the within named Melchor H. Horn, nine thousand dollars in full of the consideration money therein mentioned.

WILLIAM MILLER.
MARY MILLER.

Attest: JAS. DURFEE.

Acknowledged May 23d, 1873.

Entered Sept. 6, 1873.

EXHIBIT F.

John W. Kuntz and Wife to Mrs. Mary Miller.

This indenture, made the 1st day of April, in the year of our Lord one thousand eight hundred and sixty-eight, between John W. Kuntz, of the city of Allentown, in the county of Lehigh, and State of Pennsylvania, and Sabina, his wife, of the first part, and Mary Miller (wife of William Miller), of the borough of Catasauqua, county and State aforesaid, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of six thousand dollars, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, by these presents do grant, bargain, sell, alien, enfeoff, release and confirm, unto the said party of the second part, her heirs and assigns, all those two certain lots (contiguous) or pieces of ground situate on Second street, in the borough of Catasauqua aforesaid, bounded and described as follows, to-wit:

Beginning at the corner of lot No. 2, hereinafter described, and Second street, thence along said Second street north forty-five degrees west fifty-three feet, more or less, to lands now or late of Bernhard Ech; thence along said lands south forty-five degrees west one hundred and eighty-eight feet, more or less, to a twenty-feet-wide alley; thence along said alley south forty-five degrees east fifty-three feet, more or less, to said lot No. "2," and thence along the same north forty-five degrees east one hundred and eighty-eight feet, more or less, to the place of beginning. (It being the same premises which William McClelland, sen., and Margaret, his wife, by their indenture, dated the 21st day of March,

A. D. 1861, for the consideration therein mentioned, granted and confirmed unto the said John W. Kuntz (party hereto) his heirs and assigns forever, recorded at Allentown, in and for the county of Lehigh, in the recorder's office, in deed book vol. 26, page 394, reference thereto had will appear.) And also, No. 2, beginning at a corner of lot No. "1," hereinbefore described, and Second street, thence along said lot No. "one" south forty-five degrees west one hundred and eighty-two feet, more or less, to a twenty-feet-wide alley; thence along said alley south forty-five degrees east twenty-three feet to land of John Hudders; thence along the same north forty-five degrees east one hundred and eighty-two feet, more or less, to the aforesaid Second street; and thence along the same north forty-five degrees west twenty-three feet to the place of beginning. (It being the same premises which John Hudders and wife, by indenture dated the 6th day of May, A. D. 1864, for the consideration therein mentioned, granted and confirmed unto the said John W. Koontz (party hereto), his heirs ane assigns forever, as in and by the said in part recited indenture recorded in the office for recording of deeds, at Allentown, in and for the county of Lehigh, in deed book vol. 30, page 312, reference being thereunto had will more fully and at large appear.)

Together with all and singular the buildings, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of them, the said parties of the first part, in law, equity or otherwise howsoever, of, in, to or out of the same and every part and parcel thereof. To have and to hold the said two contiguous lots or pieces of ground above described, hereditaments and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, to and for the only proper use and behoof of the said party of the second part, her heirs and assigns forever.

And the said John W. Koontz, for himself, his heirs, executors ahd administrators, doth by these presents covenants, grant and agree to and with the said party of the second part, her heirs and assigns, that he, the said party of the first part, his heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, against him, the said party of the first part, his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, under him, them or any of them, shall and will warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, dated the day and year first above written.

JOHN W. KOONS. [SEAL.]
her
SABINA ✕ KOONS. [SEAL.]
mark.

Sealed and delivered in the presence of ELIAS MERTZ.

Received the day of the date of the within or foregoing indenture, of the within named Mary Miller, the sum of six thousand dollars, it being the consideration therein mentioned in full.

JOHN W. KOONS.

Attest: ELIAS MERTZ.

Acknowledged April 1st, 1868.

Entered April 6th, 1868.

EXHIBIT G.

William Miller and Wife to Oliver Williams.

This indenture, made the 3d day of March, in the year of our Lord one thousand eight hundred and seventy-three, between William Miller, of Saint Joseph, in the county of Buchanan, and State of Missouri, and Mary Miller, his wife, of the first part, and Oliver Williams, of the borough of Catasauqua, in the county of Lehigh, and State of Pennsylvania, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of eight thousand ($8,000) dollars, lawful money of the United States of America, unto them well and truly paid, by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do gaant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, his heirs and assigns, all those two certain contiguous lots or pieces of ground, and the buildings thereon, situate on Second street, in the borough of Catasauqua aforesaid, bounded and described as follows, to-wit:

No. 1, beginning at the corner of lot No. 2, hereinafter described, and Second street; thence along said Second street north forty-five degrees west fifty-three feet, more or less, to lands now or late of Bernhard Eich; thence along said lands south forty-five degrees west one hundred and eighty feet, more or less, to a twenty feet wide alley; thence along said alley south forty-five degrees east fifty-three feet, more or less, to said lot No. 2, and thence by the same north forty-five degrees east one hundred and eighty-eight feet, more or less, to the place of beginning; and No. 2, beginning at a corner of lot No. 1, hereinbefore described, and Second street; thence along said lot No. 1 south forty-five degrees west one hundred and eigty-two feet, more or less, to a twenty feet wide alley; thence along said alley south forty-five degrees east twenty-three feet to lands of John Hudders; thence along the same north forty-five degrees east one hundred and eighty-two feet, more or less, to the said Second street, and thence along the same north forty-five degrees west twenty-three feet to the place of beginning. It being the same premises which John W. Koons and Sabina, his wife, by indenture dated the first day of April, A. D. 1868, for the consideration therein mentioned, granted and confirmed unto the said Mary Miller (first party hereto), her heirs and assigns, forever; recorded in the office for the recording of deeds, at Allentown, in and for the county of Lehigh, in deed book vol. 37, page 110, etc.; reference being thereto had will more fully appear.

Together with all and singular the buildings, improvements, ways, waters, water courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate right, title, interest, property claim and demand whatsoever of them the said parties of the first part, in law, equity or otherwise of, in, to or out of the same, and every part or parcel thereof.

To have and to hold the said two contiguous lots or pieces of ground, hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of the said party of the second part, his heirs and assigns, forever.

And the said William Miller and Mary Miller, for themselves, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part, their heirs, all and singular the hereditaments and premises herein above described and granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against them the said parties of the first part, their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, by, from or under him, her, their or any of them, shall and will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, dated the day and year first above written.

WILLIAM MILLER. [SEAL.]
MARY MILLER. [SEAL.]

Sealed and delivered in the presence of

HERSCHEL BARTELL.
JNO. W. ZEHNER.

Received the day of the date of the within or foregoing indenture, of the within named Oliver Williams, the sum of eight thousand dollars in full of the consideration money therein mentioned.

WILLIAM MILLER.
MARY MILLER.

Attest: Jno. W. Zehner.

Acknowledged March 3d, 1873.

Entered (not stated.)

Deed book vol. 47, p. 519, etc.

And, afterwards, to-wit: on the 16th day of August, A. D. 1883, the following citation was issued and signed, to-wit:

CITATION.

The President of the United States of America to William L. Patterson, Mary Miller, William Miller, Eli J. Seager, Melchor H. Horn, Valentine W. Weaver, Wllliam B. Powell, Ed. F. Powell and The National Bank of Catasauqua, Pennsylvania:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington City, D. C., on the second Monday of October next, pursuant to an appeal taken from the final decree of the United States Circuit Court for the Western Division of the Western District of Missouri, in a certain cause wherein Henry F. Bean and John W. Alsop are appellants and you are appellees, to show cause, if any there be, why the said decree sheuld not be corrected and reversed and speedy justice should not be done to said appellants.

Witness the Honorable Arnold Krekel, one of the judges of said Circuit Court, this August 16th, A. D. 1883.

A. KREKEL, Judge.

United States of America, }
Western Division of the Western District of Missouri. } ss.

We hereby acknowledge due service of the foregoing citation, this August 17th, A. D. 1883.

ALLEN H. VORIES,
A. B. DURFEE and
VINTON PIKE,
Attorneys for said Appellees.

And on said 16th day of August, A. D. 1883, the following further proceedings were had in said cause, to-wit:

SUPERCEDEAS ON APPEAL.

In the U. S. Circuit Court for the Western Division of the Western District of Missouri.

HENRY F. BEAN *et al., Plaintiffs,*
against
WILLIAM L. PATTERSON, *et al., Defendants.*

The appeal in the above cause having been perfected by said plaintiffs by the filing this day of a good and sufficient supercedeas bond, which is this day approved, it is ordered that all further proceedings in said cause be and the same are hereby stayed until the final determination of said appeal.

A. KREKEL, Judge.

Aug. 16, '83.

Said bond for appeal is in words and figures as follows, to-wit:

APPEAL BOND.

HENRY F. BEAN *et al., Plaintiffs,*
against
WILLIAM L. PATTERSON *et al., Defendants.*

UNITED STATES OF AMERICA—*Sct.:*

Know all men by these presents, that we, Henry F. Bean and John W. Alsop, as principals, and H. Warneke and Charles Denser, as sureties, are held and firmly bound unto William L. Patterson, Mary Miller, William Miller, Eli J. Seager, Melchor H. Horn, Valentine W. Weaver, William B. Powell, Ed. F. Powell and The National Bank of Catasauqua, Pennsylvania, their executors and administrators, in the sum of fifteen hundred dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 10th day of August, A. D. 1883.

Upon this express condition, to-wit: Whereas, the above named Henry F. Bean and John W. Alsop have prosecuted an appeal to the Supreme Court of the United States, to reverse the judgment rendered in the cause above named by the Circuit Court of the United States for the Western Division of the Western District of Missouri. Now, if the above-named Henry F. Bean and John W. Alsop shall prosecute their said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

H. F. BEAN. [SEAL.]
By J. P. LEWIS, Ag't and Att'y. [SEAL.]
JOHN W. ALSOP. [SEAL.]
By J. P. LEWIS, Ag't and Att'y. [SEAL.]
H. WARNEKE. [SEAL.]
CHARLES DENSER. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record:

A. KREKEL, Judge.

Aug. 16th, 1883.

UNITED STATES OF AMERICA, }
Western District of Missouri. } SS.

HENRY WARNEKE, obligor in the within bond, being duly sworn, on his oath deposes and says, that he resides as stated therein, and is worth, over and above all his debts and liabilities, the sum of four thousand dollars, and that he owns property to that amount, subject to execution, in the State of Missouri, not including exemptions. H. WARNEKE.

Subscribed and sworn to before me this 13th day of August, A. D. 1883.

[SEAL.] L. D. RAMSAY, Notary Public.

Com. expires November 30th, 1885.

United States of America, Western District of Missouri.—ss.

CHARLES DENSER, obligor in the within bond, being duly sworn, on his oath deposes and says, that he resides as stated therein, and is worth, over and above all his debts and liabilities, the sum of six thousand dollars, and that he owns property to that amount, subject to execution, in the State of Missouri, not including exemptions. CHARLES DESNER.

Subscribed and sworn to before me this 13th day of August, A. D. 1883.

[SEAL.] L. D. RAMSAY, Notary Public.

Com. expires November 30th, 1885.

OPINION ON THE INTERLOCUTORY DECREE.

Be it remembered, that at the October term, A. D. 1881, of our said court, and on the 5th day of January, A. D. 1882, the following opinion of the Honorable Arnold Krekel, District Judge, on the hearing of said cause, and the rendition of the interlocutory decree herein, was filed, and is in words and figures following to-wit:

HENRY F. BEAN *et al.*,
Complainants,
against
WILLIAM L. PATTERSON *et al.*,
Defendants.
In Equity.

Botsford & Williams and *John P. Lewis,* for complainants.
Vories, Pike & McKillop, for defendants.

The bill in this case alleges that complainants in 1873 contracted with defendant William Miller for work to be done on a railroad then building in Ohio; that during the years of 1873 and 1874 work amounting to $16,000 was done under said contract; that on defendant failing to pay for same suit was instituted by plaintiffs in Atchison county, Missouri, and sundry tracts of land attached by virtue of process sued out; that judgment for $14,276 was obtained in the suit; that execution issued, and $3,257 and costs were collected thereunder; and that the remainder remains unpaid. The bill proceeds to allege further that on examination of the title of the land attached, such as was not sold under the execution spoken of was found to be encumbered by liens, namely, a deed of trust given in 1873 by William Miller, the defendant in the attachment suit, to Patterson, as trustee for his wife, Mary Miller, for $10,000, due in 1876, and a judgment lien of Koontz for $2,071, which incumbrances it is claimed were made and sought to be maintained for the purpose of hindering and delaying the enforcement of liabilities of said William Miller, and specially the complainants, who instituted proceedings in the state courts to remove the clouds upon the title so as to enable them to sell the land and collect their claims. The proceedings spoken of, instituted in the state courts, were, by change of venue, removed into this court, and constitute the subject-matter in litigation. The bill further charges that, after the institution of their attachment suit and proceedings to remove the clouds from the title of the land attached, defendants William Miller and wife, on the third day of January, 1876, conveyed the whole of the land in litgation to Horn and Weaver, two of the defendants, but that, aside from them, other defendants were interested therein; that at the time of said conveyance the trust deed heretofore spoken of was pretended to have been assigned to defendant Seager in consideration of $12,000; that said conveyance and assignment were in fact for the mutual benefit of the defendants named in the bill, and were contrivances to defraud the creditors of William Miller. The bill proceeds further to charge that the Koontz judgment was in reality paid off and satisfied, and kept alive by assignments, so as to encumber and cloud the title. The bill next proceeds to state that when the deed of trust fell due, in 1876, Seager, as assignee thereof, as stated, had the land thereby conveyed sold, and that he, Seager, became the purchaser thereof, but that in fact said sale and purchase were made under the collusive arrangements charged, for the benefit of the conspirators. The bill thereupon prays that the deed of trust from William Miller to his wife be declared null and void; that the Koontz judgment be declared no lien; and that the defendants interested be made to account for the rents and profits of the land during the time they had the same in possession.

The defendants, answering the bill, say that the transactions had regarding the lands in controversy were all made in good faith and for valuable considerations; deny the intent of hindering or delaying creditors and their liabilities for rent.

The testimony tends to show that William Miller, about 1870, was a man of considerable property, engaged in large undertakings as a contractor; that his own means were not sufficient to carry them on; that his wife owned property worth $14,000, aside from a farm which Miller purchased and had conveyed to her; that to raise funds for his purposes he borrowed money as early as 1870 and 1871, and to secure it Mrs. Miller's property was mortgaged; that the property mortgaged was sold and the debts incurred by Miller paid with the proceeds. The preponderance of the testimony shows the indebtedness from Miller to his wife to have existed long prior to any claim the complainants had against Miller; indeed, the trust deed given by William Miller to his wife was made and recorded about the time the work under the contract between Miller and the complainants was done. Stress is laid by complainants on the fact that Mrs. Miller assigned her deed of trust to Seager, one of her husband's creditors, who is charged to be in the combination and conspiracy to defraud, hinder, and delay Miller's creditors. But for this fact there could scarcely be any doubt that Mrs. Miller would be entitled to her deed of trust and the control of it. Is this fact alone, without any proof of her acting in bad faith, to deprive her of the right to dispose of her property as she chooses?

The law allows the wife to hold property and deal with it in her own way, and the rules applicable to dealings generally apply to her. When there are questions as to whether the wife has property of her own, and doubts exist whether the husband is seeking to use the wife's name to cover up his property from creditors, the acts done between husband and wife pertaining to property claimed by the wife will be closely scrutinized to see that their dealings are in good faith. So, also, in cases where the property of the wife, by her consent, is so mixed up and used by the husband that it cannot well be distinguished.

In the case before the court the assignment made of the trust deed to Seager at most amounts to but a choice among creditors of her husband, for there is not a doubt that Seager was a *bona fide* creditor of her husband. Nothing went to the wife under the assignment of her deed of trust. It is quite clear from the testimony that in 1876 and long prior thereto Miller was indebted to Seager, Horn, Weaver and the Bank of Catasauqua, and, finding that he was in failing circumstances, they agreed together to buy the land in controversy, and to be interested therein in proproportion to the amount of their several claims against Miller. They purchased the land at $36,400, and the deed therefor was made by Miller and wife to Horn and Weaver for the parties interested in the purchase. The testimony shows the purchase money to have been made up of various items of indebtedness of Miller to the parties interested in the purchase. The purchasers had to remove the liens of two judgments—one in favor of Koontz, now amounting to near $4,000, and another to Van Syckle of $700—which were liens on the land, to make good their title. These judgments were not paid off, but were assigned to the parties interested, to be held for contingencies. Six thousand of the $36,400 were retained by the purchasers for the same purpose. What these contingencies were is not difficult to define. An attachment for $16,100 had been sued out by complainants and levied on the land in controversy. Notice had been filed in the recorder's office of Atchison county of the levy of the attachment at the time of issuing the same. Contingencies arising from this source were to be provided for, and hence the precautions taken. The whole transaction amounts to this: Here are a number of creditors seeking to collect their debts. By the purchase of the farm they get into their possession all the debtor had. The deed of trust and the judgments were liens on the land prior to the attachment, and could not, therefore, be defeated by it. If the attachment prevailed over their deed, the amount of the deed of trust and moneys advanced on the judgment would be refunded, so that nothing could be lost in that direction, but something might be saved, if the farm sold for more than the liens, debts, and the attachments.

This being the condition of the case, the court sees no difficulty in arriving at a proper adjustment of the matter.

The deed from Miller and wife to Horn and Weaver, dated January 3, 1876, will be set aside and held for naught. Seager, as assignee of the trust deed of Mrs. Miller, having caused the land to be sold under the trust deed, himself becoming the purchaser and taking a deed therefor, that deed will be set aside and for naught held. The case will be referred to a master to take an account for rents since the possession taken under the deed from Miller and wife to Horn and Weaver, and report the value of any permanent improvements or repairs made during the time of their possession, and the amount of taxes paid thereon, and taxes now due, if any. Upon the coming in of the master's report an order of sale will be made for the whole of the land attached, excepting the quarter section sold by the sheriff, the proceeds whereof have been paid to the complainants. The funds will be applied as follows: First, to the payment of unpaid taxes; next, the amounts of the Koontz and Van Syckle judgments, with interest; next, the amount for which the deed of trust was assigned, with interest, (the difference between the amount of Mrs. Miller's trust deed and the amount for which she assigned it to Seager is reserved for further consideration); next, the complainants the amount of their judgment, with interest.

ARNOLD KREKLE,
District Judge.

UNITED STATES OF AMERICA, Sct.

I, Henry C. Geisberg, Clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a true and complete transcript of the record in the cause therein named as fully as the same appears in my office, except as modified by stipulation.

Witness my hand as Clerk, and the seal of said Court.
Done at office in Kansas City, Missouri, this
[L. S.] *fourth day of October, A. D. 1883.*

H. C. GEISBERG, Clerk.
By WARREN WATSON, Deputy Clerk.

122 – 96

Supreme Court of the United States.

OCTOBER TERM, 1883.

HENRY F. BEAN AND JOHN W. ALSOP, *Appellants*,
AGAINST
WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SAEGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL, ED. E. POWELL, AND NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, *Appellees*.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION OF APPELLANTS FOR AN ORDER ON THE CLERK TO DOCKET THE CAUSE, AND BRIEF IN SUPPORT OF THE MOTION.

JAMES S. BOTSFORD,
For the Appellants.

H. N. FAREY & CO. PRINTERS, JOURNAL BUILDING, KANSAS CITY.

—IN THE—

Supreme Court of the United States.

At the October Term, A. D. 1883.

HENRY F. BEAN and JOHN W. ALSOP, *Appellants*,

AGAINST

WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SAEGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL, ED. E. POWELL, and NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, *Appellees*.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION OF APPELLANTS FOR AN ORDER ON THE CLERK TO DOCKET THE CAUSE.

Now at this day come the above-named appellants, by their attorney, and move the court here for an order on the clerk of this court, directing and commanding said clerk forthwith, on the making of such order, to docket this cause; and in support of this motion appellants make the following statement of facts, which will fully appear by reference to the record of said cause filed with the clerk, and to the correspondence in this cause between appellants' counsel and said clerk, and on file in his office, viz:

STATEMENT OF FACTS.

On the 7th day of August, 1883, said Circuit Court rendered a final decree against appellants in said cause, which is a suit in chancery involving a controversy between appellants and appellees as citizens of different States, the amount and value in dispute being much in excess of $5,000; from which decree appellants took an appeal to this court on said day. (Pages 47, 48, 49, 50, 207, 208 and 209, Printed Record.)

Thereupon appellants, at their own expense, caused the entire record in said suit to be printed at Kansas City, Missouri, under the joint supervision of the clerk of said Circuit Court and of appellants' counsel. Whereupon the clerk of said Circuit Court duly certified one of the printed copies of the record so printed as and for the original transcript of the record in said cause, and appellants paid said clerk his fees for said transcript.

During the first six days of the October Term, A. D. 1883, of this court (to-wit: on the 9th day of October, 1883,) appellants filed with the clerk of this court said certified printed record, and twenty-five printed copies of said record, and the appearance of appellants' counsel, who is one of the enrolled attorneys of this court. And at the same time appellants paid to the clerk of this court the sum of fifty dollars, for the costs of said clerk of this court in said cause. Said printed records, so made and filed by appellants, were indexed and made to conform to rule 31 of this court contained in the 100 U. S. Rep., and which provides as follows:

RULE 31.

> All records and arguments printed for the use of the court must be in such form and size that they can be conveniently cut and bound so as to make an ordinary octavo volume. After the first day of October, 1880, the clerk will not receive or file records or arguments intended for distribution to the judges that do not conform to the requirements of this rule.

The clerk of this court received and filed, without objections, said printed records, but refused to docket said cause unless $200 is paid to him for the fee claimed to be due for certifying a copy of the record to the government printer, and for supervising the printing thereof, a service which he has not performed and will not perform in this case.

On October 23d, 1883, appellants tendered, in a letter to the clerk of this court, such amount, in addition to the $50 so paid him, as should be necessary, if any, to pay all his fees which may or can be incurred in this case apart from said charge of $200; but the clerk does not claim that said $50 is insufficient to pay his other fees except said charge, and said charge of $200 is made on the ground that the right of the clerk thereto cannot be taken away by the parties doing their own printing out of court, as has been done in this case.

GROUNDS OF MOTION.

The clerk of this court has no right under any law of the United States or rule of this court to charge a party either for certifying a copy of the record to the government printer, or for supervising the printing, except where, pursuant to the rules, the clerk is actually required to perform and actually performs that service for which the charge is made and authorized.

The clerk is not warranted by any law or rule of court to charge a party a fee for a service not performed. And as in this case appellants have furnished this court the required number of printed copies of the record, in conformity with said rule 31, regulating the manner of printing arguments and records when done by either party to a cause, the clerk has no right to charge against appellants a fee for services performed by appellants' counsel, and has no right to make said charge of $200 therefor, and the cause should be docketed notwithstanding said charge.

JAMES S. BOTSFORD,
For the Appellants.

BRIEF AND ARGUMENT.

By the schedule of fees promulgated by this court at its October Term, 1882, pursuant to the act of Congress approved March 3d, 1883, it is provided that "for preparing the record or a transcript thereof for "the printer, indexing the same, and supervising the "printing, and care and distribution of the printed "copies to the judges, the reporter, the law library, "and the parties or their counsel, fifteen cents per "folio" shall be paid to the clerk; and by paragraph four of Amendment to Rule 10, as published in the 106 U. S. Rep., it is provided that where the clerk does not furnish a manuscript copy for the printer, but instead the original record, only one-half of the above fee shall be charged.

In this case none of these services have been performed by the clerk; but it is claimed, as we understand it, that when a case goes to the Supreme Court the clerk acquires a vested right to make these charges, and cannot be deprived thereof by the parties themselves doing or having the printing done elsewhere than by the government printer.

We suppose that if the appellant should, before the records are printed, dismiss his appeal, as he may undoubtedly do, the clerk could not make this or any other charge that might be subsequently incurred if the case remained for final decision, on the ground that the taking of the appeal and filing the record in this court gave the clerk a vested right thereto; and the adverse view entertained in this case will therefore, as we suppose, be conceded to be erroneous if an appellant has the same right to print the record himself as he has to dismiss his appeal.

That the right of a litigant in this court to have the record printed, when taking up a case by appeal or writ of error, is not conferred or expressly affirmed by any rule of court, is admitted; but it is not the province, ordinarily, of rules of court to either bestow or affirm the existence of rights, but rather to regulate their exercise in the administration of justice by the court.

For example, by rule 31, published in 100 U, S. Rep., it is provided that "all *records and arguments* "printed for the use of the court must be in such form "and size that they can be conveniently cut and bound "so as to make an ordinary octavo volume. After "the first day of October, 1880, the clerk will not receive or file *records or arguments* intended for distribution to the judges that do not conform to the "requirements of this rule."

This rule was of course not addressed to the government printer or the clerk, in cases where the former does the printing and the latter supervises it.

The rule applies to both "records and arguments," but neither the government printer or clerk has anything to do with the printing of arguments.

The provision of the rule is that the clerk shall "not receive or file records or arguments" not conforming to the rule. Receive from whom? Certainly not from the government printer, because when he prints the record the clerk supervises the printing, and the rule is manifestly applicable to that class of cases where the clerk does not supervise the printing, and where the printing is done by the parties.

The rule is applicable to printed records and arguments, and furnishes to counsel who bring cases to this court the same rule as to the structure of both records and arguments, where, as in this case, counsel print both, and the same rule as to arguments alone where the record is printed by the government printer. The rule, therefore, assumes the existence of the right of a party to print the record if he chooses to do so, and proceeds to regulate the exercise of the right.

We understand, that both in cases submitted under rule 20 and cases argued, it has in different parts of the country been the practice more or less prevalent for parties, who so desired, to print their records. But however this may be, rule 31 recognizes the right, and if we have been correctly informed that rule was specially designed for the information of counsel in cases like this, where they do their own printing, so that records and arguments, which are all bound together in a book when the case is concluded, might for that purpose be of uniform size.

In different cases which have come to this court from the west, the parties have done their own printing, and in this case the circuit clerk who has supervised with us the printing of the record, has certified one of the printed copies as and for the transcript of the record of the court below, and we do not understand that there is any objection to our printed records that they do not conform to rule 31 or any other rule of this court.

The fact that these and the printed records in other cases are received by the clerk without objection is confirmatory—if confirmation be needed—of the right of a party to do his own printing.

In a case like this, where nothing is done, except the two or three minutes' labor of distributing thirteen copies of the record among the nine judges, the counsel, reporter and librarian, is the clerk, if entitled to charge a party for services not performed, justified in making the entire charge for *copying the record and supervising the printing*, or for *supervising alone*. Is he, in a case like this, entitled to the whole fee or to the half?

Does not the fact that the court, when it promulgated these amended rules, last winter, graded the fees of the clerk for these services, providing for full pay when he should copy the record and supervise the printing, and for one-half when he should supervise the printing done on the original record, conclusively show that the court intended the clerk should be paid according to the measure of service actually performed by him, and where is the authority to be found for making this or any other charge for services not performed? If there be authority for such a charge it should find a place in some express provision of law or rule to that effect.

Many centuries ago it was said that the laborer is worthy of his hire, but we never heard that that principle applies where the party is not employed to perform the service and where no service is performed by him.

The object of the rules of this court on this subject is to provide for printed records, and it is of course immaterial to the court whether the printing is done by the parties or the clerk, so that it is done conformably to the rules. Where the clerk does the work, he of course should be paid for it; but all the rules on the subject should be read together, rule 31 with the rest.

This court decided in *Steever v. Rickman*, No. 67, at this term, that as the clerk is required to account to the treasury department for all the fees earned by his office, his fees, including those for copying the transcript and supervising the printing, should be paid him in advance. But this ruling, we submit, cannot apply to this charge or to any other fee or charge which for any reason cannot be earned, and cannot in any event be lawfully taxed as costs in the case. Congress did not intend that the clerk should account for fees not earned, and therefore not properly taxable as costs in the case against either party.

The government of the United States has the same right, although appellants have paid their printer for printing this record, to require the payment in this case of the fees for printing the record, as the clerk has to charge for copying the record to the printer and for supervising the printing.

We most respectfully submit that the motion to docket the cause should be sustained.

We have not served this motion on the other party, for the reason that appellees have as yet no counsel who have appeared for them in this court. We gave a copy of the motion to docket to their counsel who represented them in the court below, but they replied that they have no interest in this proceeding and should provide for no appearance on this motion.

JAMES S. BOTSFORD,
For the Appellants.

122-496

Office Supreme Court U.S.
FILED
OCT 29 1886
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

HENRY F. BEAN AND JOHN W. ALSOP, APPELLANTS,

AGAINST

WILLIAM L. PATTERSON, MARY MILLER, WILLIAM MILLER, ELI J. SAEGER, MELCHOR H. HORN, VALENTINE W. WEAVER, WILLIAM B. POWELL, ED. E. POWELL AND THE NATIONAL BANK OF CATASAUQUA, PENNSYLVANIA, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF FOR APPELLANTS.

JAMES S. BOTSFORD,
M. T. C. WILLIAMS,
For Appellants.

H. N. FAREY & CO., PRS., JOURNAL BUILDING, KANSAS CITY.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT.

This is a suit in chancery in the nature of a creditor's bill, and was brought by appellants as plaintiffs against appellees as defendants, in the circuit court of Atchison County, Missouri, and by the defendants removed from that court to the circuit court of the United States for the Western Division of the Western District of Missouri. The subject of the controversy is 920 acres of land in said county belonging to defendant William Miller, and the object of this suit is to obtain a decree adjudging to be fraudulent and void as to plaintiffs, as Miller's creditors, a certain deed of trust in the nature of a mortgage, made by defendant William Miller to defendant William L. Patterson, in trust for defendant Mary Miller, who was and is the wife of defendant William Miller, conveying said land after said William Miller became insolvent, to secure to his said wife the payment of a pretended indebtedness of $16,000 claimed to be due from William Miller to his said wife, and the claim of the plaintiffs is that said deed of trust from Miller to his wife conveyed all of Miller's property and was fraudulent and void as to plaintiffs as the attachment and judgment creditors of said William Miller for the sum of $14,000, and that said deed of trust should therefore be cancelled and set aside so that plaintiffs may obtain satisfaction of their judgment out of said land. The record of the case now in this court shows the following facts: That in 1857, and for some years thereafter, William Miller was a merchant in Catasauqua, Pennsylvania. That after ceasing to carry on that business, Miller was a contractor for the raising of ore. That thereafter he became a contractor for the building of the Lehigh & Susquehanna railroad, and afterwards a contractor on the Union Pacific railroad. (Page 192 printed Record). That on August 20, 1873, Miller having a contract for the building in the State of Ohio of the whole or a part of the Chicago & Atlantic railway, sublet to the plaintiffs by contract of that date, the building of twelve miles of that road, and under the terms of that contract Miller was bound to pay plaintiffs for all the work done by plaintiffs each month under said contract, during the month following after the receipt from the engineer in charge of the estimate of such work done during said next preceding month. That for work done by plaintiffs under said contract in the month of September, 1873, Miller became thereupon indebted to plaintiffs in the sum of $2,773.25. That for work done by plaintiffs under said contract in the month of October, 1873, Miller became thereupon indebted to plaintiffs in the sum of $4,379.75, and that for said work done by plaintiffs under said contract during said months of September and October, 1873, and the following months of November and December, 1873 and January, February, March and April, 1874, said Miller became indebted to plaintiff in the sum of about $14,000. (Page 106 to 123 printed Record). While this work was being done, and after a large part of the indebtedness from Miller to plaintiffs therefor had accrued, and on November 10, 1873, which was one month after the commencement of the panic of 1873, Miller and wife made said deed of trust for the benefit of his wife, but the same was not recorded so as to become known until Feb. 7, 1874, (Pages 4 to 6 Record). Afterwards, and on October 21, 1884, plaintiffs brought in the said ciruit court of Atchison County, Missouri, a suit by attachment against Miller as a non-resident of the State of Missouri (§ 398 R. S. Mo.1879), to recover said sum of $14,000, and the writ of attachment issued therein was on the same day duly levied on said land. The Missouri Statute respecting attachments provides as follows:

> "When lands or tenements are to be attached, the officer shall briefly describe the same in his return, stating the quantity and situation, and declare that he has attached all the right, title and interst of the defendant in the same, or so much thereof as shall be sufficient to satisfy the debt and interest or damages and costs; and shall, also, file in the recorder's office of the county where the real estate is situated an abstract of the attachment, showing the names of the parties to the suit, and the amount of the debt, the date of the levy and a description of the real estate levied on by the same, which shall be duly recorded in the land records, and the recording paid for by the officer, and charged and collected as other costs." (Sub. III § 420 R. S. Mo. 1879)."

Pursuant to this statute the sheriff on the same day the attachment suit was brought and the attachment was levied on said land, filed in the recorder's office of the land records for said county the following abstract of the attachment:

H. F. BEAN and JOHN W. ALSOP, under the firm name of BEAN & ALSOP,
against
WILLIAM MILLER, defendant.

In the Circuit Court of Atchison county, Missouri.

To whom it may concern.

You will take notice that I have this day levied a writ of attachment, issued in the above cause, upon the following described real estate in Atchison county, in the State of Missouri, to-wit:

The northwest fourth of the southeast quarter and the north half of the southwest quarter of section No. eighteen (18), the south half of section No. nineteen (19), the west half of the northwest quarter of section No. nineteen (19) and the southeast fourth of the southwest quarter of section No. twenty-eight (28), in township No. sixty-six (66), of range No. thirty-eight: the east half and northwest fourth of the northeast quarter and the southeast quarter of section No. Twenty-four (24), the east half of the northeast quarter; the northwest fourth of the northwest quarter, the north half of the southeast quarter and the southwest fourth of the southeast quarter, of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), as the property of said William Miller, the above named defendant, that the amount claimed in said suit for which said attachment was issued, is sixteen thousand, one hundred dollars.

Done at my office in Atchison county, Missouri, this 21st day of October, 1874.

HENRY WARNEKE,
Sheriff Atchison County, Missouri.

Filed for record October 21, 1874.

JAMES M. TEMPLETON, Recorder,
Per JOHN W. SMITH, Dep.

(Pages 80 and 81, Printed Record.)

The attachment law of Missouri contains the following further provision:

> "Any attaching creditor may maintain an action for the purpose of setting aside any fraudulent conveyance, assignment, charge, lien or incumbrance of or upon any property attached in any action instituted by him; and where several attachments in favor of different plaintiffs are levied on the same property, all or any number of such plaintiffs may join in the same action for that purpose." (Sec. 448, R. S. 1879.)

Pursuant to this statute, plaintiffs, on October 23, 1874, and two days after the bringing, levying and recording of said attachment, brought this suit in said Atchison County Circuit Court, against said William L. Patterson, William Miller and Mary Miller, as defendants, to set aside said deed of trust conveying said lands from William Miller to William L. Patterson, in trust for Mary Miller, the wife of William Miller, as being fraudulent and void as to plaintiffs. (Pages 2, 3 and 4, printed Record.)

The Missouri statutes contain the following further provision:

> "In any civil action, based on any equitable right, claim or lien, affecting or designed to affect real estate, the plaintiff shall file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit, stating the names of the parties, the style of the action and the term of the court to which such suit is brought, and a description of the real estate liable to be affected thereby; and a pendency of such suit shall be constructive notice to purchasers of (or) incumbrances, only from the time

of filing such notice. The recorder shall note the time of receiving such notice, and shall record and index the same in like manner as deeds of real estate are required to be recorded and indexed." (Sec. 3,217, R. S. 1879.)

Pursuant to this statute, plaintiffs, on the same day this suit was brought, filed for record with the recorder of deeds of said county, the following notice of this suit:

"H. F. BEAN and J. W. ALSOP, under the firm name of BEAN & ALSOP, Plaintiffs,

vs.

WILLIAM L. PATTERSON, MARY MILLER and WILLIAM MILLER, Defendants.

In the Atchison County Circuit Court, January Term, 1875.

To whom it may concern:

Take notice that a suit entitled as above has this day been filed in the circuit court of Atchison county, Missouri, by the above named plaintiffs, against the above named defendants for the purpose of setting aside, and declaring void, a deed of trust, in said suit described, executed by said William Miller and Mary Miller to said William L. Patterson, purporting to convey to said William L. Patterson the following described real estate in Atchison county, Missouri, to-wit: The north-west fourth of the south-east quarter, and the west half of the south-west quarter of section No. eighteen (18), the south half and the west half of the north-west quarter of section No. nineteen (19), and the south-east fourth of the south-west quarter, of section No. twenty-eight (28), in township No. sixty-six (66), of range no thirty-eight (38), also the east half of the north-east quarter, and the north-west fourth of the north-east quarter of section No. twenty-four (24), and the north-west fourth of the north-west quarter; the east half of the north-east quarter, the north half of the south-east quarter, and the south-west fourth of the south-east quarter, of section No. twenty-five (25), in township No. sixty-six (66), of range No. thirty-nine (39), to have and to hold in trust for the purpose of securing the payment of sixteen thousand dollars and interest by said William Miller to Mary Miller, which trust deed is subject to be set aside on the ground of fraud to creditors and others.

H. F. BEAN,
J. W. ALSOP,
Per Lewis & Asteb, Attorneys.

Filed for record October 23, 1874.

JAMES M. TEMPLETON,
Recorder.

Per J. W. SMITH, Deputy.

Some time after the bringing of the attachment suit, that in interest, who bought and took an assignment of the same pending this suit and pending the attachment, and after the recording of both of them in the land records of the county, even though made upon sufficient consideration so far as Saeger *et al* are concerned.

The only question, therefore, for decision by this court is whether said Mary Miller's deed of trust as the same existed from its execution to the time of bringing these suits, was and is valid as to plaintiffs, as the creditors of Miller prior to the making of said Mary Miller deed of trust. The court below adjudged void and decreed a cancellation of the conveyance from Miller and wife to Saeger in 1875 of said lands, and also of the sale and conveyance by the sheriff as trustee under the Mary Miller deed of trust to Saeger, but adjudged that said deed of trust was not fraudulent and void, but was valid as to plaintiffs, and when made to Mrs. Miller. (Pages 38, 39, 40, 47, 48, 49 and 50, printed Record.) From said decree adjudging said Mary Miller deed of trust to be valid, plaintiffs appeal to this court. Since January 1876, when the Mary Miller deed of trust and the Koontz mortgage and judgment of foreclosure were assigned to Saeger, Horn, Weaver, Powell and the bank, those defendants holding under those mortgages have been in continuous possession of said lands, and during all that time have received and enjoyed the rents and profits thereof. The annual value of which rents and profits is fixed by the report of the master as approved by the decree of the court at the sum of $1,455. (Pages 45-7, printed Record.)

The pleadings and evidence disclose the following facts in regard to the invalidity of the Mary Miller deed of trust. Complainants' bill avers as follows:

"Seventh. That after the execution of the contract so sued upon, and the performance of the greater portion of the work done thereunder, and while said work was still in progress, to-wit, on the tenth day of November, A. D. 1873, said William and Mary Miller, his wife, executed, and on the 7th day of February, A. D. 1874, filed for record in the office of the recorder of deeds of said Atchison county, a deed of trust, a copy of which is attached to the original bill in this cause, purporting to convey to the defendant, William L. Patterson, all the said Atchison county lands, except the said southeast quarter of section No. twenty-four (24), for the alleged purpose of securing to said Mary Miller a pretended indebtedness from said William Miller to her of the sum of sixteen thousand dollars, with interest, which sum of sixteen thousand dollars, is therein (in the deed) represented to have been received by said Mary Miller from the sale of the individual property of said Mary Miller, and used by her husband in payment for the real estate in said deed of trust described, that said deed of trust provided for foreclosure in default of payment by said trustee, William L. Patterson, or in case of his absence, death or refusal to act by the then acting sheriff of Atchison county, Missouri. That at said times William Miller, and before the execution of said deed of trust, was and is insolvent, and has no other property out of which to pay the debt of complainants herein.

Eighth. But your orators allege that said deed of trust was not made in good faith for the purposes therein expressed to secure any indebtedness to said Mary Miller for moneys derived from her individual estate, and used by said William in payment for said lands, but was executed for the purpose and with the intent to hinder, delay and defraud the creditors of him, the said William Miller of their lawful actions, damages, forfeitures, debts and demands, and especially so to defraud your orators, and that all the parties to said deed of trust were cognizant of its fraudulent purposes, and your orators further charge that said instrument is fraudulent on its face. (Page 26, Record.)

The deed of trust from Miller to his wife contained the following recital:

"In trust however, for the following purposes: Whereas, said William Miller, one of the said parties of the first part is indebted to the said Mary Miller, party of the third part, in the sum of sixteen thousand dollars, together with interest thereon from the 25th day of June, 1871, *being the sum realized and received by said William Miller from the sale of the individual property of said Mary Miller, and used by him in the payment for the real estate hereinbefore mentioned and described, and to secure the indebtedness of said William Miller on account thereof,* which said sum of sixteen thousand dollars, with the interest thereon, is due and payable on the 25th day of June, A. D. 1876." (Pages 4 and 5, Record.)

The answer of defendants contained the following averments and denials:

"Sixth. The defendant, William Miller, denies that at the time of executing the contract sued on, or for any time before or subsequent thereto, he was the equitable owner of the lands set out in said complainants' bill, or that said lands were of no greater value than to have paid said judgment debt. He admits that at said time the legal title to said lands was in him, said Miller, and the other defendants, except Mary Miller, say that they have not sufficient knowledge or information thereof to form a belief, and never were otherwise informed thereof than by complainant's bill: and the said defendant, Mary Miller, says that the equitable title to said lands, at the time specified was in her by reason of *loaning* the said William Miller, who was her husband, her individual, *sole and separate moneys*, with which to remove *liens and pay off incumbrances upon said land*, by which she became and was in equity subrogated to the right of said incumbrances, both by contract and in equity.

"Seventh. These defendants, William and Mary Miller admit that on the 10th day of November, A. D. 1873, they executed, and on the 7th day of February, A. D. 1874, there was filed for record in the office of the recorder of deeds in Atchison county, in the State of Missouri, a deed of trust, a copy of which is filed with said bill, purporting to convey to the defendant, William L. Patterson, all of the lands in said Atchison county set out in said complainant's bill, except said southeast quarter of section twenty-four; but they deny that said conveyance was for the alleged purpose of securing to the said Mary Miller any pretended indebtedness from said William to said Mary Miller, of the sum of sixteen thousand dollars, with interest, and they charge that sum had been prior to said time *loaned* to said William Miller by the said Mary Miller from moneys realized from sales of her own *sole and separate estates real*, in the states of Pennsylvania and Missouri, and turned over for his use and benefit in good faith *to pay the purchase money and to remove incumbrances from said Atchison county lands*, and done and made in good faith, without any knowledge or information or belief that said William Miller was indebted or in failing circumstances, and which said trust deed, they still charge, did truly represent that said moneys, so owing by said William to said Mary, were received from the sale of the individual property of the said Mary Miller, *and used by her husband in the payment of the real estate in said deed of trust described*, and the other defendants say in reference to said allegations, charges and statements last aforesaid, that they have no sufficient knowledge and information thereof to form a belief that said deed of trust was made in good faith to secure said Mary Miller in the amount of money *loaned* him by her out of her indivdual, *sole and separate property* and effects, and they never were otherwise informed thereof than by complainants bill. All these defendants admit that said deed of trust provided for a foreclosure, in default of payment by said Miller by said trustee, William L. Patterson, or in case of his absence, death or refusal to act, by the then acting sheriff of Atchison county, Missouri.

"Eighth. These defendants further answering, all say and charge that said deed of trust was made in good faith for the purposes therein expressed to secure an indebtedness to said Mary Miller for and on account of moneys derived from her *sole, separate* and individual estate, and used by the said William for his own purposes, *to pay for said lands and remove incumbrances contracted to pay for the same*, and further charge that said deed of trust was not executed for the purpose, or with the intent to hinder, delay or defraud the creditors of said William Miller of their lawful actions, damages, forfeitures, debts or demands, or either of them, or said complainants or either of them, or anyone, to defraud or otherwise wrong; and further deny that any of these defendants ever knew or carried out any fraudulent purposes of said deed of trust; or ever knew, were informed or believed that it was fraudulent on its face, or ever heard of it, otherwise than by complainant's bill, of being fraudulent or dishonest." (Pages 31, 32 and 33 record.)

Upon the question of the insolvency of William Miller, the testimony was as follows:

John P. Lewis, one of plaintiff's attorneys, in Atchison county, testified:

"While William Miller lived here he seemed to be rather hard pressed at times for money. I know of his having been sued on several occasions. I was one of the attorneys in a suit instituted by the State Bank of Nebraska upon a note and mortgage given by William Miller to James Wood for a balance arising in some manner out of the estate sale of Mr. Wood's interest in the partnership to William Miller, in which there was about four thousand dollars involved. I also was the attorney in a couple of other suits instituted against him by the Council Bluffs Iron Works, in which the amount involved, as near as I can call to mind, (was) some twelve or fourteen hundred dollars. Since the institution of the present suit I have made various inquiries to ascertain the financial condition of William Miller. So far as I can find he is insolvent, and so far as there is any general repute upon that subject in this county, it is to the effect that he has no available assets from which any considerable debt could be made." * * * "At the time William and Mary Miller finally sold out in this county, I think he was generally reputed to be insolvent, and I know of no other property than the property involved in this suit from which there is any chance to make so large a debt as this one, nor have I been able to find any thereof of consequence anywhere." (Pages 61 and 66, record.)

Henry Warneke, sheriff of Atchison county, testified as follows:

"Q. You may state whether any executions were in your hands, as sheriff, against William Miller. Ans. There was.

"Q. What property, if any, has William Miller in this county, or anywhere else that you know of? Ans. He has not any in this county that I know of, nor do I know of any any place else. I don't know what he has elsewhere.

"Q. State whether any of his lands were ever advertised at sheriff sale for payment of his debts. Ans. I advertised his lands for sale while I was sheriff, I think on a Herman Koontz judgment. The sale was ordered held up by plaintiff's attorney." (Pages 125 and 126, record.)

Defendant Seager, who lives at the former home of Miller in Pennsylvania, testifies as follows: (Page 133 Record.)

"Q. What is Mr. Miller's present financial condition? A. I understand that it is not good; only know this from what I have heard.

As further proof of Miller's insolvency, reference is made to the suit and judgment of Herman Koontz against William Miller for $2,071.20, (page 81 to 87, Record,) and to the suit and judgment of the State Bank of Nebraska against William Miller for $3,998.09. (Page 91 to 105, Record.) As to the claim made in defendants' answer, that the land in controversy was bought with the money of Mrs. Miller, and that she was the equitable owner thereof, the evidence is as follows: At the May term, 1871, of the Atchison County Circuit Court, the State Bank of Nebraska, as plaintiff, brought a foreclosure suit on a note and mortgage for $3,381 against said William Miller and Mary Miller as defendants, which suit proceeded to judgment in favor of the plaintiffs therein. The pleadings, judgment and proceedings in that cause may be found at pages 91 to 105, Record. The note sued upon was made by William Miller, March 24, 1870, and was payable April 1, 1871, to the order of James Wood, who assigned and delivered the same to the plaintiff bank. The mortgage sought to be foreclosed was executed to secure the payment of said note by William Miller and Mary Miller, as his wife, having dower in the land, and in their answer to the petition in that case, Miller and wife made the following averments which were admitted by the replication to the answer. That prior to the making of said note, William Miller and said James Wood were partners in the buying of a farm in said county, (being the land in controversy in this case), as well as a large lot of cattle, horses, mules and farming utensils. That each partner was to furnish $6,000 to carry out the partnership and purchase said land and personal property, and that Miller paid $6,000 to Wood for that purpose. That Miller being absent, engaged in the construction of the Pacific railroad, Wood had charge of the partnership affairs. The answer of William and Mary Miller concluded with the following averment made by them:

> "Defendants further state that the said defendant Mary Miller is the wife of the said William Miller, is no wise connected with the premises except as one of the mortgagors, which mortgage she signed jointly with her husband, and is, therefore, an improper party to plaintiff's action."

The foreclosure in that case was against 160 acres of land, which, with the land in controversy in this case, constitute the farm owned by James Wood and William Miller as partners, for the purchase of which and the stock thereon each furnished $6,000. The said answer of William Miller and Mary Miller contained the following further averment:

> "That he (Wood) was anxious to sell his interest in and to said land (meaning the entire Wood and Miller farm, containing 1080 acres and including the 920 acres in controversy in this case) to the said defendant Miller; that the said William Miller, relying upon the word and representation of the said Wood, having then no actual knowledge of the business, purchased said Wood's interest, in and to said lands, and paid him the agreed price thereof at the time of said purchase, all but the sum of thirty-three hundred and eighty-one dollars, for which the said note and mortgage declared upon by plaintiff was given, and is the only consideration thereof."

The conveyances by which James Wood and William Miller acquired said land may be found at pages 147 to 156, Record.

At page 147 will be found a deed dated April 6, 1869, from George M. Boordman and wife to James Wood and William Miller, conveying 40 acres of the land in controversy to said Wood and Miller, "for and in consideration of one hundred and twenty dollars to him in hand paid by said" James Wood and William Miller.

At page 148 may be found a deed dated June 17, 1868, from Russell Hinckley and wife to James Wood, conveying to said Wood 280 acres of the land in controversy, "for and in consideration of the sum of sixteen hundred and eighty dollars in hand paid by" Woods.

At page 149 may be found a deed dated July 20, 1868, from George R. Ramsey and wife to James Wood and William Miller, conveying to said Wood and Miller 40 acres of the land in controversy, "in consideration of the sum of four hundred dollars to them paid" by said Wood and Miller.

At page 150 may be found a deed dated July 28, 1868, from Henry S. Pedigo and wife to James Wood and Willliam Miller, conveying to them 40 acres of the land in controversy "in consideration of the sum of three hundred and twenty-five dollars to them paid by the said" James Wood and William Miller.

At page 151 may be found a deed dated February 9, 1869, from Horatio D. Van Sycle and wife to James Wood, conveying to him 160 acres of the land in controversy, "in consideration of the sum of eight hundred dollars to them paid by the said" James Wood.

At page 152 may be found a deed dated February 19, 1869, from Henry S. Pedigo and wife to James Wood and William Miller, conveying to them 40 acres of the land in controversy "in consideration of the sum of three hundred and forty (340) dollars to them paid by the said" James Wood and William Miller.

At page 152 may be found a deed dated June 11, 1869, from Joseph E. Ludlow and wife to James Wood, conveying to him 120 acres of the land in controversy, "in consideration of the sum of eleven hundred (1100) dollars to the said Joseph E. Ludlow and Margaret E. Ludlow in hand paid by James Wood."

At page 153 may be found a deed dated February 20, 1869, from Robert Howke and wife and William E. Dillon and wife to James Wood and William Miller, conveying to them 160 acres of the land in controversy, "in consideration of the sum of eight hundred dollars to them in hand paid by the said" James Wood and William Miller.

At page 154 may be found a deed dated August 10, 1869, from James M. Templeton and others to James Wood and William Miller, conveying to them 40 acres of the land in controversy, "in consideration of the sum of one hundred and fifty dollars to them paid by the said" James Wood and William Miller.

At page 155 may be found a deed dated May 6, 1870, from Joseph E. Ludlow and wife to James Wood, conveying to him 40 acres of the land in controversy, in consideration of the sum of $250 "paid by James Wood."

At page 156 may be found a deed dated August 10, 1868, from A. W. Miller to James Wood and William Miller, conveying to them 120 acres of the land in controversy, "in consideration of the sum of seven hundred and fifty dollars to him paid by said James Wood and William Miller."

At page 157 may be found a deed dated January 4, 1869, from Mansel Graves and wife to James Wood, conveying to him 40 acres of said Wood and Miller farm, "in consideration of the sum of two hundred dollars to them paid by the said" James Wood.

At pages 77 and 78 may be found the quit-claim deed from James Wood to William Miller, dated March 24, 1870, conveying to William Miller the one half interest of James Wood in the entire Wood and Miller farm, "in consideration of the sum of six thousand dollars to the said James Wood in hand paid by Wiliam Miller."

There was no evidence in the case to show that any of the moneys paid by William Miller for his one-half of these lands when they were first bought by him and Wood, or any of the moneys paid by William Miller to Wood for the purchase by Miller of Wood's half interest, belonged in point of fact to Mrs. Miller or to any other person when said moneys were so paid by said William Miller, and said lands were so conveyed to him for the moneys so paid by him, and neither William Miller or his wife, although both defendants in this suit, testified or deposed as a witness, either in their own behalf or in behalf of any of their co-defendants. Neither of them were sworn or testified upon any point in the case.

As to the claim made in defendants' answer that the sole and separate moneys of Mrs. Miller were loaned by her to her husband to pay off incumbrances on the land in controversy, the evidence is that some time in 1870, William Miller borrowed $25,000 from the banking house of Jay Cooke & Co., and to secure said loan, gave defendant, Eli J. Seager, as his endorser. The note was made by Miller to Seager and delivered by Miller to Jay Cooke & Co. with Seager's endorsement thereon; and about a year after the making of the loan, Miller made to Seager a deed of trust by way of a mortgage on the land in controversy to secure Seager as endorser for Miller on said note. The $25,000 was afterwards fully repaid to Jay Cooke & Co., but no part of it was paid by Seager, and no liability as endorser was incurred by him; and Seager, in respect of said endorsement therefore never became a creditor of Millers so as to make said deed of trust an irrevocable incumbrance in his favor. Said deed of trust is at page 79 of the Record, and is the only deed of trust or mortgage ever made by Miller on the lands in controversy, except the Mary Miller deed of trust.

There is no evidence in the record of any loan by Mrs. Miller to her husband or any transaction between them. The evidence shows that in February, 1870, George R. Ramsey made a deed to Mrs. Miller conveying to her about 400 acres of land in said county of Atchison, known as the "Ramsey farm," for a consideration recited in the deed of $11,000, (page 72, Record,) and concerning this transaction and the payment to him of said $11,000, Mr. Ramsey testified as follows:

> "Int. 4. About when did you sell this land, and when did you get your pay for it? Ans. Sold sometime in the fall of '69; got $500 down, $6,000 in November of that year, and when the deed was given I got the balance.
>
> "Int. 5. About when did you make the deed, and what was the full consideration for the land? Ans. Made the deed in the early part of '70. The full consideration for the land was about $11,000.
>
> "Int. 6. How was the first $500 paid, and who paid it? Ans. It was paid in check by William Miller on Koontz's bank, Omaha.
>
> "Int. 7. State if you know how and by whom the other payments were made. Ans. Six thousand (6,000) paid by the same bank on check in the same way. The balance was paid by William Miller by check on Durfee & Wyatt, of Rockport, Mo. (Pages 52 and 53, Record.)

In the year 1866 defendant Horn, of Catasauqua, Pennsylvania, made a deed to Mrs. Miller conveying to her a certain lot in that town known as the "Thomas lot," which deed contained the following recital:

> * * ("it being the same premises which David Thomas and wife, by indenture dated the 20th day of February, A. D. 1864, recorded in the office for the recording of deeds, at Allentown, in and for said county of Lehigh, in deed book Vol. 29, page 527,

etc., granted and confirmed unto William Miller, his heirs and assigns in fee, and the same premises which William Miller and wife, by indenture dated the 24th day of February, A. D. 1866, which deed is not yet recorded, granted and confirmed unto the said M. H. Horn, his heirs and assigns in fee." (Pages 198 and 199, Record). Concerning these conveyances defendant Horn testified as follows:

> "That property was originally sold by David Thomas to William Miller, and William Miller and wife conveyed to me, and re-conveyed it to Mrs. Miller. Consideration in the deed is the same as that in deed of David Thomas to William Miller. No money passed through my hands. Part of the Thomas property was conveyed to Mrs. Miller direct. No reason was given at the time for the conveying this property to Mrs. Miller through me. I simply acted as trustee for the purpose of getting the title in Mrs. Miller." (Page 195, Record.)

In 1868 John W. Kuntz, of Catasauqua, made a deed to Mrs. Miller of a lot in that town known as the Kuntz lot, for the consideration recited in the deed of $6,000. (Page 203, Record.)

After Miller had caused these three deeds of the "Ramsey farm" in Missouri, and the "Thomas and Kuntz lots" in Pennsylvania, to be thus conveyed to his wife, he, Miller, caused, in 1870, his wife to give him a general power of attorney, with full power to sell and give deeds for said Thomas and Kuntz lots, upon such terms as he might see fit. (Page 143, Record.) As will be seen from the citations from defendants' answer hereinbefore contained, defendants' claim that this property thus deeded to Mrs. Miller, and the moneys derived therefrom, were the "sole and separate" property and moneys of Mrs. Miller, (pages 32 and 33, Record,) but the deeds to her of the Ramsey farm in Missouri, and the Thomas and Kuntz lots in Pennsylvania (pages 72-198 and 203, Record) were ordinary deeds in form, and contained no language conveying the property to the "*sole and separate use*" of Mrs. Miller, or depriving Mr. Miller of his marital rights in the land or the moneys which might come into his hands therefrom.

There is no evidence in the record that Mrs. Miller ever used or occupied either the Ramsey farm or the Thomas or Kuntz lots, or that she ever exercised any acts of ownership over the same, or that she ever received any of the profits arising therefrom, either to her sole and separate use or in any other manner. Nor is there any evidence in the record that prior to the times when Miller caused these deeds to be made to her, she received from her parents or from any other source, any money, or that she ever carried on any business of her own from which any separate means could have been obtained by her. After Miller had caused his wife to give him said power of attorney, he, Miller, sold to his co-defendants, Seager, Horn and Weaver, the "Ramsey," "Thomas" and "Kuntz" tracts thus held in Mrs. Miller's name, and disposed of the proceeds thereof to his own use without any objection on the part of Mrs. Miller, so far as the record discloses, to such disposition by him of such proceeds. The evidence on this branch of the case is as follows:

In December, 1870, Miller made a mortgage to Seager conveying to him the Thomas and Koontz lots to secure Seager, as Miller's endorser to Jay Cooke & Co., and this mortgage was signed and acknowledged by Miller for himself and by him as attorney in fact for Mrs. Miller. (Page 141, Record). From the testimony of defendant Seager, at page 181 Record, the following appears:

That about December, 1870, Seager obtained as before stated, a loan for Miller of $25,000 from Jay Cooke & Co.,for which, as before stated, Miller gave his note for that amount to Seager and the note with Seager's endorsement thereon was delivered to Jay Cooke & Co. That to secure Seager as such endorser Miller gave to Seager the deed of trust by way of a mortgage on the property in controversy hereinbefore referred to, and also said mortgage last above referred to, conveying the "Thomas" and "Koontz" lots. In speaking of this mortgage Seager says (page 181, Record):

> "Mary Miller gave me a mortgage on her property in Catasauqua, executed by her and her husband, for the sum of ten thousand dollars, also as collateral, for the endorsement of the Cooke loan."

This is the mortgage at page 141, Record, but it was signed, executed and acknowledged by William Miller for himself and as attorney in fact for his wife, and there is nothing to show that Mrs. Miller took any part in the making of said mortgage. The record shows that by the power of attorney from Mrs. Miller to Mr. Miller, he was enabled to and did exercise the same control, supervision and acts of ownership for his own benefit over his property, standing in the name of Mrs. Miller, as over his property standing in his own name.

From the testimony of defendant Horn, at page 189, Record, it appears that in December, 1871, Horn negotiated a loan for Miller of $12,500 from the Penn Mutual Life Insurance Company, and the net proceeds of the loan amounted to $11,747.15. That about the same time the "Ramsey" farm was sold by Miller to defendants Horn, Weaver and Seager for a consideration of $11,000, of which $5,000 was deposited to Miller's credit in the defendant National Bank of Catasauqua by Horn, Weaver and Seager, who were officers of said bank, and the balance of $6,000 due Miller was paid to Miller in Allentown Rolling Mill Co. stock in that amount, from which, on a sale thereof Miller realized the sum of $5,000 in cash, and that in this way Miller obtained $10,000 cash for the Ramsey farm. (The deed for this sale, dated Feb. 23, 1872, is at pages 76 and 77, Record). In speaking of these two amounts of $5,000 each obtained by Miller for the Ramsey farm, defendant Horn says (page 189, Record): "These amounts were paid to William Miller on his checks or notes falling due at the National Bank of Catasauqua." It further appears from Horn's testimony, that in April, 1873, the "Kuntz" lot in Catasauqua was sold to Oliver Williams for $8,000, which sum was thereupon paid to the Penn Mutual Life Insurance Co. on Miller's debt thereto of $12,500. That in May, 1873, the witness Horn purchased the "Thomas" lot for $5,500, and that at the same time he, Horn purchased from Miller another house and lot standing in the name of Miller himself, and known as the "Zehner" lot, for $3,000. That these two sums of $5,500 and $3,000 due for the "Thomas" lot, standing in the name of Mrs. Miller, and the "Zehner" lot, standing in the name of Mr. Miller, were paid by Horn to Miller, by Horn depositing $4,000 to the credit of William Miller in said National Bank, and by Horn paying for Miller the balance of $4,500 to the Penn Mutual Life Insurance Co., in discharge of the balance of Miller's debt thereto of $12,500. The $12,500 obtained by Miller from the Penn Mutual Life Insurance Co. was paid on Miller's debt to Jay Cooke & Co., and the balance of $25,000 due that firm from Miller was paid by Miller from other moneys. On cross examination defendant Horn, the Cashier of said bank, speaking with reference to the use made by Miller of the deposits in said bank to his credit of the proceeds of the sales of the "Ramsey", "Thomas" and "Kuntz" tracts, testified as follows:

"Answer—They were applied to the payment of checks drawn by Miller, and for the payment of his notes falling due at the bank. I cannot tell which notes were paid without looking at the books of the bank, and cannot tell as they were his notes, and we do not keep an account of the payee's name of business notes payable at our bank.

"Cross Q. 2. State how much was consumed in paying his notes at your bank? A. I now have discount check book, which exhibits the discount of the rolling mill note referred to in my examination-in-chief, which shows that a discount check was issued to William Miller May 4th, 1872, for $4,920. I do not know what he did with it. At the time I deposited the $4,000 to William Miller's credit it required $2,343,07 to make his account good or pay his own drafts in the bank. After depositing the $4,000 there was a balance due him of $1,656.93. On the 17th day of June, 1873, his account is charged with his note to Blumer & Co. for $1560, and the balance was drawn out by various checks. At the time of depositing the first $5,000 on account of the Ramsey farm, Miller drew $4,000 on his own check. On the same day he obtained a draft on some city institution for $261.37, for which he drew his check on us. On February 13, following, he obtained a draft and cash amounting to $500. On June 24, 1872, $3,544.62 was drawn in same manner for the benefit of Jay Cooke & Co. On the 26th of the same month paid the First National Bank, at Allentown, for his benefit, the sum of $1,500. February 16, 1872, Miller obtained a draft on his check for $2,945. This is a running account in ledger of William Miller in the National Bank of Catasauqua, in which deposits were made at various times, and on which checks were drawn and notes charged at different times.

"Cross Q. 3. You may state the entire amount of debits and credits of William Miller's account on the books of the National Bank of Catasauqua between December 6, 1870, and July 12, 1872, and of the amounts from that date to this. A. Debits, July 12, 1872, $41,861.25, and credits, $40,628.88; and since July 12, 1872, to January 14, 1876, debits $98,701.03; credits to same time, $99,933.40. These last debits do not include those given before. We have no business tranactions, that I am aware of, with William Miller since January 14, 1876.

"Cross Q. 4. From what sources did Mr. Miller derive the large credits made to his account since July 12, 1872? A. From discounts of notes, accommodation, and business notes, except a mortgage for E. G. Reeves for $1,770.81, a mortgage for Leslie Miller for $2,193.20.

"Cross Q. 5. State whether or not you know, of your own knowledge or from Mr. Miller, how the balance was paid on the Jay Cooke & Co. note. A. I do not." (Pages 191 and 192, Record.)

As further proof that Miller used that portion of his property which stood in his wife's name the same as that standing in his own name, we refer to the following facts shown in evidence:

On January 3, 1876, and nearly a year and a half after the bringing of this suit and the recording with the recorder of deeds of the abstract of the attachment of these plaintiffs of the land in controversy in their attachment suit against Miller, and the filing with said recorder of the *lis pendeus* in this case, Miller, by deed executed by himself and wife, conveyed the lands in controversy to defendants Horn and Weaver for the benefit of Horn, Weaver, Seager, the defendant Bank and the Powells. (This deed may be found at pages 158 to 160, Record.) The consideration for this conveyance was $36,000, due from William Miller to defendants Seager, Horn, Weaver, the Bank and the Powells. (Pages 64, 65 and 193, Record). But as said conveyance by Miller to the other defendants of the land in controversy a year and a half after the bringing of the attachment and this suit, could not, even if founded upon an ample consideration paid to Miller at the time, operate to or have any effect by reason of the recording of the attachment and the *lis pendeus* in this case with the recorder when these suits were brought, the prior lien of the attachment and of the judgment therein, and the prior lien of the creditors' bill in this case were sought to be avoided by the assignment by Miller and wife to Seager, for the benefit of himself and the other defendants, of the deed of trust from Miller to Patterson for the benefit of Mrs. Miller for the lands in controversy, and which deed of trust was made and recorded about eight months before these suits were brought, and which deed of trust is the one plaintiffs seek to avoid in this case. This assignment of the Mary Miller deed of trust was made the same day the deed from Miller was made, and may be found at page 141, Record. No money was paid to Mrs. Miller for the assignment of this deed of trust, and the only consideration therefor were said debts due from William Miller to Horn, Seager, Weaver, the Bank and the Powells. The evidence shows that Miller did not owe the whole $36,000, and that the true amount of the indebtedness from him to these parties was about $30,000, and that the balance of the $36,000 was retained as against Miller by Seager, Horn, Weaver, & Co., to protect them against the attachment and this suit. On this point defendant Seager, in his testimony at page 184, testifies:

"There was a reservation for imperfect title or attachment, or whatever it might be, amounting to between five and six thousand dollars. It was not more than six thousand dollars. I am satisfied it did not exceed six thousand dollars."

But if Seager, Horn, Weaver & Co. had not taken the conveyance from Miller and the assignment of the Mary Miller deed of trust with full and actual knowledge of plaintiff's lien in this and the attachment suit, they obtained the assignment subject to the *lis pendeus* and the recording of the attachment, and acquired by the assignment the same title, and no more, than was held by Mrs. Miller when these suits were brought.

The answer of the defendants is not sworn to, and as before stated, neither Mr. or Mrs. Miller were sworn as witnesses to prove that she had any separate property, and there is no proof in the case that she ever owned or loaned to her husband a single dollar, or that he ever promised to pay her anything. The evidence shows that the property in controversy is worth $14,400. (Pages 162 and 163, Record.) The masters report shows the annual net rental value of the land in controversy to be $1,455. (Page 45, Record.) The defendants, Seager, Horn, Weaver, the bank and the Powels, have had possession of the lands since 1876.

ASSIGNMENT OF ERRORS.

And now at this day come the appellants by their counsel and say that the court below, in the hearing and decision of this cause committed the following errors, viz:

I.

Said court erred in the giving of its interlocutory decree herein to be found at pages 38, 39 and 40, Record, and in not adjudging in and by said decree that said deed of trust from said William Miller to said William L. Patterson, in trust for Mary Miller, the wife of said William Miller, dated November 10, 1873, was fraudulent and void as to appellants as the creditors of said William Miller, prior to the giving of said deed of trust.

II.

Said court erred in the giving against these appellants of its final decree in this cause, to be found at pages 47, 48, 49 and 50 of the Record, and in adjudging in and by said final decree that said deed of trust made November 10, 1873, for the benefit of said Mrs. Miller, was valid as against these plaintiffs.

III.

On the pleadings and all the evidence the decree of the court below, both interlocutory and final, should have been in favor of the plaintiffs, adjudging said deed of trust dated November 10, 1873, to be fraudulent and void as to plaintiffs, and said court erred in not giving such decree. Wherefore, and by reason of divers other errors manifest and appearing from the record herein, appellants pray the court to reverse the said decrees of the court below, and to remand this cause with directions to said court to adjudge said deed of trust, dated November 10, 1873, to be fraudulent and void as to appellants, and to further proceed herein according to law.

JAMES S. BOTSFORD.
MARCUS T. C. WILLIAMS.
For the Appellants.

BRIEF AND ARGUMENT.

The only question in this case is whether the Mary Miller deed of trust, made to her by her husband November 10, 1873, is valid as to appellants as the prior attaching and judgment creditors of Miller. If said deed of trust is valid the decree of the court below should be affirmed. If the same is fraudulent and void as to appellants, then the decree should be reversed and the cause remanded as prayed in the assignment of errors. The statutes of Missouri (§ 2497 Rev. Stat. Mo. 1879) render null and void all conveyances of land made with intent to hinder, delay or defraud the creditors of the grantor. The appellants were the creditors of William Miller prior to the giving of the deed of trust by Miller to his wife on November 10, 1873. The contract under which Miller became indebted to appellants was made by Miller and appellants August 20, 1873, and for work done by appellants under that contract in the months of September and October, 1873, Miller became indebted to appellants in, and he owed them on November 1, 1873, which was ten days prior to the giving of said deed of trust, the sum of $7,000, and for the entire work done under the contract of August 1873, by appellants, from September 1, 1873, to April 1, 1874, Miller became indebted to appellants in the sum of $14,000, for which the judgment in the attachment suit was recovered and remains wholly unpaid.

The authorities are ample to the effect that the entire indebtedness of $14,000 relates back to the date of the contract of August 20, 1873, under which the work was performed and which fixed the liabilities of the parties, and constitutes appellant's prior creditors to the deed of trust to Mrs. Miller, made November 10, 1873, as to the entire $14,000, although a portion of the work was performed and a portion of the entire debt of $14,000 accrued after the giving of the deed.

Thus in *Thompson v. Thompson*, 19 Me., 244, where a bond with a surety was given by the guardian to secure the ward against official neglect or misconduct, it was held that the relation of debtor and creditor arose at the time of signing the bond, and that the obligee, or those whom the bond was designed to protect as creditors, might impeach any conveyance made after its date, though prior to any breach of the bond. And in Bump on Fraudulent Convey. (3d Ed.), p. 507, it is said:

> "The distinction between prior and subsequent creditors makes it important at times to inquire into the date and origin of a demand. It may be laid down as a general rule that all claims which arise from contract are in force from the date of the agreement. The liability dates from that time, although no demand accrues untill a subsequent date."

And this statement of the law is followed by several illustrations of the rule.

In this connection it must be remembered that the Mrs. Miller deed of trust was signed and acknowledged by Miller, November 10, 1873, and by Mrs. Miller, December 10, 1873, and that it was not recorded until February 7, 1874, from which last date the deed could only take effect as to creditors and purchasers of Miller.

There can, therefore, be no doubt that, in any view, appellants were creditors of William Miller prior to the recording of said deed of trust for all moneys earned prior to February, 1874. (*Harris v. Bank*, 4 Dillon, 133.) Equally certain and positive is the testimony, that Miller for some time prior to the giving of said deed of trust had been embarrassed and hopelessly insolvent.

For some time prior to the giving of the deed of trust to his wife he had owned no other property except the property conveyed to her by said deed. He was indebted to appellants in the sum of $7,000 and contingently liable for $14,000. He also owed the Koontz judgment amounting to $2,000, which still remains unpaid. He also owed the Pennsylvania parties, composed of Seager, Horn, Weaver, and the Bank, about $30,000, in different amounts, being the sums for which the Mary Miller deed of trust was assigned and the property conveyed by Miller and wife to them after the bringing of these suits. Miller's indebtedness was, therefore, about $46,000. The proof shows the land conveyed to Mrs. Miller being, as we have seen, all of his property when said deed was made, was worth about $15,000. He was not only commercially insolvent in the sense of being unable to pay his debts as they became due, but his estate, however administered, was only sufficient, after paying the costs, to pay a small portion of his debts. Although the subject of the controversy here is a farm, Miller for over fifteen years before making this deed was wholly engaged in large commercial ventures. He was a contractor and railroad builder, and his field of operations extended from the Alleghenies to the Rocky Mountains. His liability to appellants arose from one of his railroad contracts, and his embarrassment and insolvency are not to be regarded as if he had been a mere farmer, but must be considered as growing out of large commercial transactions. He deposited in the Pennsylvania Bank, both before and for some time after giving the Mary Miller deed of trust, but while the aggregate amount of his deposits was large, his debits at the bank exceeded his credits, and there seems to have been no balance in his favor at any time. The appellants being prior attaching and judgment creditors for their demand of $14,000, and Miller having been hopelessly insolvent when he made the trust deed to his wife, and he having by that deed conveyed to her all his property, and both Miller and wife, although parties to this suit, not having testified as witnesses in this case, either in their own behalf or on behalf of Seager et al., and the necessary effect of the conveyance by Miller to his wife being to hinder, delay or defraud the appellants out of the collection of their demand from the property so conveyed, the presumption from these facts is that said deed of trust to Mrs. Miller was made with that intent, and that the same was and is fraudulent and void as to appellants. Keeping in mind throughout the case that the Pennsylvania defendants took their assignment of the trust deed and purchased the property in controversy from Miller and wife *pendente lite*, and long after the bringing of this and the suit by attachment and the filing of the notices thereof with the recorder, and that, therefore, the suit stands the same as if no assignment or conveyance had been made and as if the suit were against Miller and wife alone, the rule is well settled that it devolved upon the defendants in this case to prove, affirmatively, that the deed of trust from Miller to his wife was made upon sufficient consideration, and was made honestly and in good faith. The rule is well stated by this court in the analogous case of *Seitz v. Mitchell*, 94 U. S., 582, as follows:

"Purchases of either real or personal property made by the wife of an insolvent debtor during coverture, are justly regarded with suspicion, unless it clearly appears that the consideration was paid out of her separate estate. Such is the community of interest between husband and wife; such purchases are so often made a cover for a debtor's property, are so frequently resorted to for the purpose of withdrawing his property from the reach of his creditors and preserving it for his own use, and they hold forth such temptations for fraud, that they require close scrutiny. In a contest between the creditors of the husband and the wife there is, and there should be, a presumption against her, which she must overcome by affirmative proof. Such has always been the rule of the common law; and the rule continues, though statutes have modified the doctrine that gave to the husband absolutely the personal property of the wife in possession and the right to reduce into his possession and ownership all her choses in action. Authorities to this effect are very numerous.

"In *Gamber v. Gamber*, 18 Pa. St., 306, a case where a wife claimed personal property against the insolvent estate of her deceased husband, it was said by the court: 'In the case of a purchase after marriage, the burden is upon the wife to prove distinctly that she paid for it (viz. the property purchased by her) with funds which were not furnished by the husband.'

"In *Keeny v. Good*, 21 Id., 349, where the contest was between a wife and her husband's creditors, it was ruled that mere evidence that she purchased the property during the coverture is not sufficient to give her title; that it must satisfactorily be shown that the property was paid for with her own separate funds, and that in the absence of such evidence the presumption is a violent one that the husband furnished the means of payment, and it was held that this rule applies to real as well as to personal estate. So in *Walker v. Reamey*, 36 Id., 410, a contest respecting real estate, where the purchase was made by a wife in her name, and where the money paid upon the contract, so far as payment was shown, was paid by her, it was held that a married woman claiming in opposition to her husband's creditors, property purchased after marriage, must show that she had received money by will or descent, conveyance or otherwise, and had invested it in the property claimed. It was also said not to be enough that she was seen in the frequent possession of money after the passage of the married woman's act of the State, for in such case the presumption is that it was the husband's money. So in *Parvin v. Capewell*, 9 Wright, 89, it was decided that the mere possession of money by a wife is no evidence of her title in an action by a creditor of the husband, and when there is no evidence save possession, the jury should be instructed to find for the creditor."

In this case the answer of the defendants cannot be relied upon as evidence in favor of defendants to everthrow the presumption of fraud arising from Miller's insolvency and the conveyance of all his property to his wife, for the reason that the answer is not sworn to, (*Patterson v. Gaines*, 6 How., 588,) and the presumption of fraud which arises from the facts that appellants are prior creditors, and from Miller's insolvency and the conveyance of all his property to his wife, is not only intensified by the failure of defendants to have Miller and his wife testify as witnesses in the case, but their failure to testify is of itself sufficient to create the presumption of fraud.

Baldwin v. Whitcomb, 71 Mo., 658.
Henderson v. Henderson, 55 Mo., 559.
Bump on Fraud. Con. (3d Ed.), p. 54.

Nor is the recital in the deed from Miller to his wife evidence, under the circumstances of this case, of the fact of such indebtedness. While a deed is ordinarily *prima facie* evidence of the recitals contained in it; yet when a state of facts, as in this case, is shown in proof from which the presumption arises, that the deed is fraudulent and void, it devolves upon the grantee to prove the existence and payment of the consideration, by affirmative evidence independent of the recitals in the deed.

Bump on Fraud. Con. (3d Ed.), pp. 55, 594.

This rule is analagous to the case of a suit by an endorsee on a promissory note against the maker where the proof of the maker shows the note to have been fraudulently obtained, and where the rule requires the endorsee, on this state of facts, to affirmatively prove the payment of a sufficient consideration for the note to the endorser, which payment would ordinarily be presumed from the transfer and delivery of the note. It is also analagous to the rule which obtains where, to defeat the equitable title of the plaintiff, the defendant avers that he is an innocent purchaser of the legal title for value without notice, but is held to make affirmative proof of the consideration.

But as a matter of fact the evidence shows the recital in the deed from Miller to his wife of the consideration to be false. That recital is as follows:

"Whereas, said William Miller, one of the said parties of the first part, is indebted to the said Mary Miller, party of third part, in the sum of sixteen thousand dollars, together with interest thereon from the 25th day of June, A. D. 1871, being the sum realized and received by said William Miller from the sale of the individual property of said Mary Miller, and used by him in the payment for the real estate hereinbefore mentioned and described, and to secure the indebtedness of said William Miller on account thereof."

This statement and recital is false in several respects. It is false for the reason first, that the real estate conveyed to Mrs. Miller, and in controversy in this suit, was purchased by the money of William Miller and not with that of his wife. The farm in controversy was, and is, known as the Wood and Miller farm, and, as we have seen, the evidence shows that James Wood and William Miller were partners in the purchase and stocking of the farm, each contributing $6,000 to the partnership. Miller being away and engaged in carrying out his railroad contracts, Wood carried on the farm. The deeds by which Wood and Miller bought the farm may be found at pages 147 to 156, Record, and they show that Miller's half interest in the land was paid for by him. Of course there could be no presumption that the money paid by Miller was the money of his wife; on the contrary, the presumption, as we have seen, would be the other way. And the presumption is that money possessed by the wife is the money of the husband. The deed by which Wood conveyed to Miller his (Wood's) half interest in the farm to Miller, when the partnership was dissolved, is at pages 77 and 78, Record, and shows the payment of the consideration therefor by William Miller. Not only so, but in the suit of State Bank of Nebraska against William Miller and Mary Miller, the transcript of which suit is at pages 91 to 105, Record, and which was a suit to foreclose a note and mortgage given on a portion of the Wood and Miller farm by Miller to Wood, when Wood sold out to Miller, and which note and mortgage were by Wood assigned to the plaintiff, the State Bank of Nebraska, Mrs. Miller, who was made a party defendant with her husband, by her answer with her husband, (page 98, Record), disclaimed any interest in the farm, and set up that she was "an improper party to plaintiff's action." Of course if Miller bought the farm with Mrs. Miller's money, and the legal title was placed in Miller, then she had a resulting trust and was, in equity, the owner, and instead of disclaiming any interest she should have set up her title as the equitable owner, which gave her the right to redeem the mortgage sought to be foreclosed. As to the statement in the recital in the Mary Miller deed of trust, that money had come into the hands of William Miller from the sale of the "individual property of said Mary Miller, and used by him in the payment for the real estate hereinbefore mentioned," the falsity thereof further appears from the fact that the Wood and Miller farm was purchased by Miller before the purchase and sale by Miller of any of the property, the title of which he placed in his wife, and which in the recital in the Mary Miller deed of trust is denominated her individual property. The deeds to Wood and Miller of the farm (page 147 to 156, Record), were all made in the years 1868 and 1869, and prior to June, 1870, and they all recite the payment by Wood and Miller of the consideration.

The deed from Wood to Miller, when the former sold his interest to the latter, was made March 24, 1870. (P. 77 and 78, Record.

The only property ever held in the name of Mrs. Miller was the "Ramsey" farm in Missouri, and the "Thomas" and "Kuntz" lots in Catasauqua, Pa., all of which were bought by Miller and the titles placed in her. The Ramsey farm was sold February 23, 1872, (pp. 76 and 77, Record), and the "Thomas" and "Kuntz" lots were sold May 23, 1873, and March 3, 1873. (pp. 201 and 205, Record.) The farm in controversy having then been bought and paid for by Miller prior to June 1870, it was impossible for Miller to have paid for the same from the proceeds received by him from the subsequent sale of the "Ramsey" farm and the "Thomas" and "Kuntz" lots in 1872 and 1873. Nor is there any truth in the claim that any part of the proceeds of said farm and lots were used in paying off incumbrances on the property in controversy. The only trust deed made by Miller on the property in controversy before making the trust deed to his wife, was the one made to Saeger to secure him from liability as endorser on Miller's note of $25,000, given for the loan by Miller of $25,000 from Jay Cooke & Co. (P. 79-181, Record.) But as Saeger paid no part of the debt of Miller to Jay Cooke & Co., no liability was ever incurred in his favor against Miller under the deed of trust, and the debt to Jay Cooke & Co. having been paid by Miller, the deed of trust from Miller to Saeger as endorser was by such payment discharged. It cannot therefore be claimed that Mrs. Miller ever became subrogated to any lien on the land. But it will nevertheless be claimed that Miller was indebted to his wife and that such indebtedness was a sufficient consideration for the deed of trust from him to her. The false recital which we have been considering implies that he became indebted to her on June 25, 1871, in the precise sum of $16,000, payable June 25, 1876, with interest; but the rate is not stated. But where is the evidence to support the claim of this indebtedness? It is not claimed that any note or memorandum of indebtedness was ever given by Miller to his wife, and neither he, her, or any other witness was placed upon the stand to swear that he ever promised to pay her so much as a farthing. The claim is that he became indebted to her on account of the receipt by him of the proceeds of the "Ramsey" farm and the "Thomas" and Kuntz lots. But these properties realized the sum of $24,000, (p. 189, Record), and if the proceeds thereof belonged to Mrs. Miller, then Miller was indebted to her in that amount instead of $16,000. But as the property in controversy was only worth about $15,000 when Miller made the deed of trust to his wife, it may be that the parties thought a recital of an indebtedness of $16,000 was sufficient for the purpose of covering up the farm.

The recital is false in another particular. Its language is "is indebted to the said Mary Miller, party of third part, in the sum of sixteen thousand dollars, together with interest thereon, from the 25th day of June, A. D. 1871, being the sum realized and received by said William Miller from the sale of the individual property of the said Mary Miller." But if Miller ever became indebted to his wife on account of the proceeds of her property, it was long after June 25, 1871. As before stated it is not claimed that she ever had any other property except the "Ramsey" farm and the "Thomas" and "Kuntz" lots. That is all the property that ever stood in her name, or that ever in anyway vested in her. And that property was not sold, and the proceeds did not pass into his hands, until 1872 and 1873, one and two years after June 25, 1871. But let us examine the proposition that Miller became indebted to his wife by reason of the receipt of these proceeds. As to the "Thomas" lot the evidence shows that the title thereto was originally in Mr. Miller, and that he conveyed it to defendant Horn, who then conveyed it to Mrs. Miller without the payment of anything, either by Horn or Mrs. Miller. Horn testified on this point as follows:

> "That property was originally sold by David Thomas to William Miller, and William Miller and wife conveyed to me, and reconveyed it to Mrs. Miller. Consideration in the deed is the same as that in deed of David Thomas to William Miller. No money passed through my hands. Part of the Thomas property was conveyed to Mrs. Miller direct. No reason was given at the time for the conveying this property to Mrs. Miller through me. I simply acted as trustee for the purpose of getting the title in Mrs. Miller." (Page 195, Record.)

Accordingly the deed to this property from Horn to Mrs. Miller, (page 198, Record), contained the following recital:

> "It being the same premises which David Thomas and wife by indenture dated the 20th day of February, A. D. 1864, recorded in the office for the recording of deeds at Allentown, in and for said county of Lehigh, in deed book Vol. 29, page 527, etc., granted and confirmed unto William Miller, his heirs and assigns in fee, and the same premises which William Miller and wife, by indenture dated the 24th day of February, A. D. 1866, which deed is not yet recorded, granted and confirmed unto the said M. H. Horn, his heirs and assigns in fee."

As to the "Ramsey" farm, which was conveyed to Mrs. Miller, the testimony is that Miller paid his own money therefor when it was bought. On this point Geo. R. Ramsey, from whom the land was bought, testified as follows: (Page 53, Record.)

> "Int. 5. About when did you make the deed, and what was the full consideration for the land? Ans. Made the deed in the early part of '70. The full consideration for the land was about $11,000.
>
> "Int. 6. How was the first $500 paid, and who paid it? Ans. It was paid in check by William Miller on Koontz's Bank, Omaha.
>
> "Int. 7. State if you know how and by whom the other payments were paid. Ans. Six thousand (6,000) paid by the same bank on check in the same way. The balance was paid by William Miller by check on Durfee & Wyatt, of Rockport, Mo."

It thus appears that the land which stood in the name of Mrs. Miller was either conveyed to her by him through another person, or purchased with his money.

In each case it was a voluntary conveyance, without consideration, of the property by Miller to his wife; and although there is nothing to show as to whether he was solvent or insolvent when these deeds were made, yet we submit that in view of the large enterprises and hazardous contracts which he constantly undertook, these transfers of the Ramsey farm and the Pennsylvania lots, were, as to his creditors, fraudulent and void.

Thus in *Parish v. Murphree*, 13 How., 92, it was held by this court that a merchant largely indebted, *and whose means of payment were subject to many contingencies*, was not in a condition to make a voluntary settlement on a member of his family. So in *Fisher v. Lewis*, 69 Mo., 629, it was held that a voluntary conveyance, made while the grantor was free from debt, with several other deeds, to his children, and when the grantor was on the eve of engaging in a hazardous business enterprise, was fraudulent and void as to a subsequent creditor.

There is no more hazardous business than that of contracting to build railroads, in which Miller had been engaged for about 15 years, and when we consider that the combined value of the Ramsey farm, the Thomas and Kuntz lots, and the Wood and Miller farm now in controversy, which at different times were all conveyed to Mrs. Miller, was $41,000, and that that large amount of property was attempted by him, through the several conveyances thereof to his wife, to be withdrawn from liability to respond to his large and continuing contracts as a railroad builder, the inference is that when each conveyance was made by him to his wife, followed by a power of attorney from her to him empowering him to sell, he was getting ready for a rainy day; and in view of his hazardous business and the large amounts of property thus conveyed to her at different times, it follows from the doctrine of the cases cited that the conveyances by Miller to his wife of the Ramsey farm and the Thomas and Kuntz lots were fraudulent and void as to Miller's creditors prior and subsequent, including these appellants, and those conveyances being therefore void as to appellants, could not, as against them, constitute a sufficient consideration for the indebtedness intended to be secured by the Mary Miller deed of trust now in controversy. But if the conveyances to Mrs. Miller, of the Ramsey farm and the Thomas and Kuntz lots were not fraudulent or void as to Miller's creditors, and if the effect of them was to vest valid titles thereto in her, still the proceeds thereof, when they came into Miller's hands from the sales thereof, did not, in the absence of an agreement to that effect, of which there is no evidence in this case, become the consideration for an indebtedness from Miller to his wife, for the reason that the proceeds of those sales in the hands of Miller belonged to him and not to her. The deeds to Mrs. Miller of the "Ramsey" farm and the "Thomas" and "Kuntz" lots may be found at pages 72, 198 and 204, Record, and an examination of them will show that in none of them was a "sole and separate estate," as is claimed for her in defendants' answer, conveyed to her, nor was Mr. Miller by any of said deeds deprived of his marital rights or control over any of said property. Those deeds conveyed to her simply an ordinary legal estate, and the proceeds of the sale thereof became his property when reduced into possession by him.

In the case of *Kesner v. Trigg*, 98 U. S., 50, this court recognized the doctrine that "if the husband and wife sell and convey her lands, the money which he receives therefor, without any reservation of rights on her part, will belong to him."

In Schouler's Domestic Relations, p. 120, the rule is stated as follows:

> "Where real estate of the wife is sold, and notes are given payable to her, the property changes its character and becomes personal property in the shape of a *chose in action*. The husband may then reduce into possession as in other cases; and if the executor or other party making the sale pays the cash proceeds into the husband's hands, the money belongs to him absolutely, and his receipt extinguishes all claims of his wife."

So in *Hamlin, Receiver, vs. Jones and wife*, 20 Wis., 536, it was adjudged that when real estate of the wife is sold and by husband and wife conveyed, the moneys arising from such sale are the property of the husband. The court in that case, says:

> "By the principles of the common law, when the real estate of the wife is sold and by husband and wife conveyed, the moneys arising from such sale are the property of the husband and subject to his debts. The title therefore to the land ordered to be conveyed to the receiver was rightly taken by the husband, John Jones, in his own name, when he purchased it of the United States, and it was his own. The conveyances from the husband and wife to their son, and from the son to his mother, were fraudulent and void as to Lloyd, the plaintiff in the judgment."

In that case Mrs. Jones had inherited some land from her mother, which, being sold, the proceeds passed to Mr. Jones and were by him used in purchasing the land conveyed by him to his son, and by the latter to Mrs. Jones, and these conveyances the court adjudged to be void as to Jones' creditors. So in *Tillman v. Tillman*, 50 Mo., 40, it was held that where land is held by the wife simply as her own, and in which the husband has marital rights, if she join in the sale, and the proceeds are collected by him in his own name, used as he uses his other funds, there being no contract or understanding with the wife in regard to them, they become the property of the husband. This was a case of a claim by the wife against the representatives of her husband, and not like the case at bar of a claim by the wife or those standing in her shoes, against the creditors of the husband. In deciding that case the court used the following language:

> "The land sold belonged to the wife, but was not her sole and separate property. Had it been so held by her the husband might be treated as her agent in the collection of the proceeds, and they would still belong to her unless it could be shown that she intended to give them to him. But when land is held by the wife simply as her own, and in which the husband has marital rights, if she join in the sale, and the proceeds are collected by him in his own name, used as he uses his other funds, there being no contract or understanding with the wife in regard to them, they are reduced to possession, and are appropriated by him, and by her presumed consent. The only thing relied upon to show the intention to hold the money for her use is the fact that in entering the receipts upon the books of account it was shown that they were proceeds of her land. There was no investment in her name, no charge to himself and credit to her, and there is no evidence whatever that he intended or she desired him to hold the amounts collected to her separate use."

See also the precisely analogous case of *Sloan v. Torry*, 78 Mo., 623, where it was held that the promise of a husband to repay his wife the proceeds of land which belonged to her, but not as her separate estate, and which has been disposed of and used by him with her consent, is without sufficient consideration to make her his creditor. The "Ramsey" farm and the Pennsylvania lots having been conveyed to Mrs. Miller after her marriage with Mr. Miller, and having been acquired with the money of Mr. Miller, the Missouri act of 1865, now § 3295 R. S. Mo., 1879, does not apply to the case, (*Sloan v. Torry*, 78 Mo., 623.) Nor does the Missouri act of 1875, now § 3294 R. S. Mo., 1879 apply. The transactions in this case all took place prior to the passage of said act of 1875. It is well settled in Missouri in harmony with the general current of authority that a general deed of conveyance such as those conveying to Mrs. Miller the "Ramsey" farm and the Catasauqua lots, containing, as they do, no language conveying her a "sole and separate estate," does not convey a separate estate to the grantee, (*Bauer v. Bauer*, 40 Mo., 61; *Boatman Savings Bank v. Collins*, 75 Mo., 280.) It follows from these citations that the money received by Mr. Miller from the sale of the Ramsey farm and the Catasauqua lots was his money; that he did not owe Mrs. Miller anything, and that the deed of trust of the lands in controversy from Miller to his wife was without consideration and voluntary, and is fraudulent and void as to appellants. But if said farm and lots had been her sole and separate estates and the proceeds thereof, when received by Miller, had been her moneys, still the use and intermingling of her moneys with his own, under the circumstances of this case, made said moneys as against Miller's creditors, while he so used them and obtained credit on them, his moneys and not hers. Thus in *Humes v. Scruggs*, 94 U. S., 22, which is much like this case, it was decided that if money which a married woman might have had secured to her own use, is allowed to go into the business of her husband, be mixed with his property, and applied to the purchase of real estate for his advantage, or for the purpose of giving him credit in business, and is thus used for a series of years, such real estate, unless there is, at the time of its purchase, a specific agreement that it shall belong to the wife, becomes the property of the husband for the purpose of paying his debts, and a conveyance thereof to his wife, upon the occurrence of his bankruptcy, is a fraud upon his creditors, and void. See also *In re Jones* 6, Biss. 68, to the same effect. There was no agreement at any time between Miller and his wife that the proceeds of said farm and lots, or any money in his hands, should be hers, and no agreement that he ever promised to pay her anything on account of those or any other moneys. No part of said moneys received by him from said farm and lots were used for any specific purpose, so as to be capable of being traced beyond his hands, but, on the contrary, they were mixed with his own moneys and made to swell his capital in business in the large sum of $24,000, and used to pay his debts. At page 189, R., defendant Horn testifies that the $10,000 received from the sale of the Ramsey farm was deposited to the credit of Miller in defendant Bank, of which the witness was cashier, and paid out from Miller's account with the bank, embracing that and other moneys, on his checks or notes falling due at said bank; that the $8,000 received from the "Kuntz" lot was also appropriated to Miller's account, and paid out on one of his debts, and that the "Thomas" lot, which Miller had conveyed to his wife, and the "Zehner" property, which stood in the name of Miller himself, were sold together by him, the Thomas lot for $6,000, and the Zehner property for $3,000, and that of the total $9,000 realized from both, Horn deposited $4,000 in the bank to Miller's credit, and the balance of the $9,000 was paid out on one of Miller's debts. On these facts, the moneys derived from the Ramsey farm and said lots, even though originally her moneys, became, under the operation of the rule of *Humes v. Scruggs*, and *In re Jones, supra,* the moneys of Miller, at least as against his creditors. Apart from the many conclusive evidences of fraud in the giving by Miller to his wife of said deed of trust, is the use made by him of the property which stood in her name. Mrs. Miller was never in possession of either the farm or lots standing in her name; she never exercised any acts of ownership over either of them, or received the rents and profits or proceeds of the sales thereof. There is a faint effort in the testimony of defendants Seager, Weaver and Horn to make it appear by the use of certain language, that Mrs. Miller was the meritorious owner of the farm and lots. To illustrate, at page 181, R., Horn says:

> "Mary Miller gave me a mortgage on her property in Catasauqua, executed by her and her husband, for the sum of ten thousand dollars, also as collateral for the endorsement of the Cooke loan."

But this statement made under solemn oath, is utterly misleading, as will be seen by reference to said mortgage (page 141, R.), which was signed, executed and acknowledged by William Miller for himself, and as attorney in fact for his wife, under the general power of attorney which she had given him, and she was unknown and did not participate in the transaction. There is nothing to show that she knew that the farm or lots had been conveyed to her, or that she was the owner of either of them. Miller uses them, mortgages them, sells them and receives the proceeds of them in all respects the same as his own property. If there was any purpose in having them conveyed to his wife, and stand in her name, except to keep them from the reach of his creditors, it is not discernable from any testimony in the Record. He was practically as much the owner of each tract standing in her name as if he had taken the conveyance to himself, and the conveyances to her of the different tracts, having been so made for his use as the grantor in each instance, are void under our statute of frauds (§ 2496 R. S. Mo. 1879), and that the deed of trust from Miller to his wife, of the land in controversy, was made by Miller, to and for his own use, and was therefore, null and void absolutely, from that consideration alone, under the statute referred to, is shown by the simple fact that over a year after the bringing of this suit, Miller conveyed to defendants Saeger, Horn, Weaver and the Bank, the land conveyed theretofore to his wife by the deed of trust, and at the same time had his wife join himself in an assignment to the same parties of the deed of trust, so given to her to pay his debt and without a cent of consideration passing to her. Even had he been indebted to her for $16,000, nothing could be more conclusive than this to prove the utter nullity of that deed of trust, and that it was made with fraudulent intent. In respect of all the property conveyed to her, it was held, used, mortgaged and re-mortgaged, conveyed and reconveyed as Miller's projects persuaded, or his necessities demanded.

We repeat that the undoubted effect of the deed of trust from Miller to his wife, conveying all his property was to hinder and delay his creditors in the collection of their demands. The other creditors of Miller, after the execution of this deed of trust, and after the institution of these suits by appellants against Miller and his wife, were compelled to resort to the land conveyed in said deed of trust to secure their claims, and to procure from Miller a voluntary assignment of their interests in these lands for that purpose, otherwise they would have found no property in Miller's name, or in which he had any interest out of which to secure payment of their debts. So that it may be safely claimed that this deed of trust in effect, removing Miller's whole property from the control of his creditors and preventing them from subjecting it to the ordinary process of law for the satisfaction of their debts, was a fraud on their rights. The appellants, as his creditors, had no remedy except to resort to equity to set aside the deed of trust as made and executed for the purpose of hindering and delaying them in the collection of their just demands. The other creditors, after appellants had secured a lien and charge on the lands by judicial proceedings, resort to the other method of a transfer and surrender by Miller and wife, to them of the lands in controversy. Neither set of creditors regarded the deed of trust to Mrs. Miller as withdrawing Miller's property from the payment of his debts, and Mrs. Miller seems to have been a passive instrument in the execution of the deed of trust, and in its transfer to the creditors in Pennsylvania, the "old friends of her husband" to secure payment to them of her husband's debts. We repeat, that there is no evidence to show that Mary Miller ever had any separate estate; that she ever carried on any business or ever received any property other than from her husband. There is no evidence whatever to show that there ever was any agreement between Miller and his wife that he should become her creditor in any amount, or pay her any sum whatever. Miller traded on the property in his wife's name in connection with his own, and the same as his own property, until he becomes indebted beyond his ability to pay, and then he makes a transfer of all of his property to his wife's trustee, professedly for her benefit. Neither Miller nor his wife answer the bill under oath, and the deposition of neither has been taken in this cause. If William Miller made any agreement or contract with his wife which a court of equity would recognize, at the time he was selling the property in her name, to become her debtor to the amount of the proceeds received by him, and to secure her therefor on his own property; if Mary Miller *had any interest* in the property in her name, except such as she derived from her husband, arising from any separate means of her own; if she paid any part of the purchase money for the lands in controversy so as to raise a resulting trust in her favor; if the deed of trust made by her husband to Patterson in her favor, of the lands in controversy was a *bona fide* transaction to secure a *bona fide* debt, and not fraudulent as charged in the bill, the evidence of such facts was peculiarly within the knowledge of William Miller and Mary Miller, and should have been shown affirmatively by them. The defendants Saegar *et al.* claim under them and under the deed of trust after